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# TRANSCRIPT

No. 991

District Court No. 479,319

E. E. FORBES, ET AL.,

*Appellants,*

v.

CITY OF HOUSTON, ET AL.,

*Appellees.*

## TRANSCRIPT FROM THE 133rd DISTRICT COURT OF HARRIS COUNTY, TEXAS HON. WILMER HUNT, JUDGE PRESIDING

W. SEARS McGEE,
Esperson Bldg., Houston, Texas
WILL SEARS,
and
ROBERT L. BURNS,
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and
VINSON, ELKINS, WEEMS & SEARLS
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Esperson Bldg., Houston, Texas
*Attorneys for Appellees*

Applied for Will Sears, Attorney for Appellants, on the 3rd day of May, 1957 and delivered to Will Sears on the ____ day of May, 1957.

R. J. LINDLEY
Clerk of the District Court
of Harris County, Texas.

By _____ *Deputy.*

BOYD PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

# INDEX


| | | Page |
|---|---|---|
| 1. | Plaintiffs' First Amended Original Petition | 1 |
| 2. | Defendants' First Amended Original Answer | 26 |
| 3. | Plaintiffs' Request for Jury | 34 |
| 4. | Defendants' Motion for Summary Judgment | 34 |
| | (a) Exhibit A, Ordinance No. 3351 | 39 |
| | (b) Exhibit B, Affidavit of Publication | 61 |
| | (c) Exhibit C, December 31, 1956 Minutes | 63 |
| 5. | Plaintiffs' Motion for Summary Judgment | 65 |
| 6. | (Plaintiffs') Affidavit of Will Sears in Support of Plaintiffs' Motion for Summary Judgment and Opposing Defendants' Motion for Summary Judgment | 69 |
| | (a) Exhibit A, Ordinance 3351, First Reading | 80 |
| | (b) Exhibit B, October 31, 1956, Minutes | 91 |
| | (c) Exhibit C, Ordinance 3351, Second Reading as Amended | 92 |
| | (d) Exhibit D, November 21, 1956, Minutes | 102 |
| | (e) Exhibit E, Ordinance 3351, Third Reading as Further Amended | 109 |
| | (f) Exhibit F, November 28, 1956, Minutes | 111 |
| | (g) Exhibit G, Motion No. 7265, Dec. 26, 1956 | 117 |
| | (h) Exhibit H, December 31, 1956, Minutes | 118 |
| | (i) Exhibit I, Ordinance 57-144, Water District Takeover | 118 |
| | (j) Exhibit J, Ordinance 57-143, Water District Management | 119 |
| 7. | Plaintiffs' Request for Admissions | 132 |
| 8. | (Defendants') Supplemental Affidavit by George Neal in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment | 136 |
| | (a) Exhibit A, Motion 6840, Nov. 14, 1956 | 138 |
| | (b) Exhibit B, November 19, 1956, Minutes | 138 |

PAGE

(c) Exhibit C, Council Rules of Procedure ..... 141

(d) Exhibit C-1, Amendment to Rules of Procedure .... 147

(e) Exhibit C-2, Amendment to Rules of Procedure .... 150

(f) Exhibit C-3, Amendment to Rules of Procedure .... 151

(g) Exhibit C-4, Amendment to Rules of Procedure .... 152

9. (Defendants') Affidavit of George Neal in Opposing Plaintiffs' Motion for Summary Judgment as to the First Alleged Cause of Action and the Second Alleged Cause of Action ..... 154

10. Answer of Defendants to Plaintiffs' Request for Admissions ..... 157

11. Plaintiffs' Motion for Continuance and Resetting of Hearing on Motions for Summary Judgment — (also submitted as Affidavit on such Motions) ..... 162

(a) Exhibit A, Opinion of County Attorney Resweber 167

(b) Exhibit B, Attorney General's Letter ..... 170

12. Plaintiffs Supplemental Affidavit by Will Sears ..... 175

13. (Defendants') Affidavit of Anna Russell in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment .... 180

14. Plaintiffs' Second Supplemental Affidavit by Will Sears 184

15. (Defendants') Second Supplemental Affidavit of George Neal in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment ..... 186

(a) Exhibit A, Ordinance 2234, First Reading ..... 188

(b) Exhibit B, Ordinance 2234, Second Reading ..... 202

(c) Exhibit C-1, February 1, 1956, Minutes ..... 203

(d) Exhibit C-2, February 15, 1956, Minutes ..... 205

(e) Exhibit C-3, March 7, 1956, Minutes ..... 207

(f) Exhibit C-3-a, March 27, 1956, Minutes ..... 208

(g) Exhibit C-4, April 18, 1956, Minutes ..... 209

(h) Exhibit C-5, August 29, 1956, Minutes ..... 210

PAGE

16. (Plaintiffs') Affidavits of W. Sears McGee and Will Sears Opposing Defendants' Motion for Summary Judgment and Supporting Plaintiffs' Motion for Summary Judgment ..... 211

17. Plaintiffs' Motion Concerning Form of Judgment Entered ..... 215

18. Final Judgment Form Proposed by Plaintiffs and Refused by Court ..... 216

19. Final Judgment of the Court, Containing Notice of Appeal ..... 218

20. Appeal Bond ..... 219

21. Order as to Original Paper and Exhibit ..... 223

22. Designation of Record on Appeal ..... 224

23. Certified Bill of Costs ..... 232

THE STATE OF TEXAS }
COUNTY OF HARRIS }

At a term of the 133rd Judicial District Court of Harris County, Texas, which began in said county on the 7th day of January, 1957 and which will terminate by operation of law on the 30th day of June, 1957, the Honorable Wilmer B. Hunt sitting as Judge of said court, the following proceedings were had, to-wit:

No. 479,319

| | |
|---|---|
| E. E. FORBES, ET AL., *Plaintiffs,* | In the 133rd Judicial District Court of Harris County, Texas. |
| v. | |
| CITY OF HOUSTON, ET AL., *Defendants,* | |

Filed Feb. 11, 1957

## PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

### FIRST CAUSE OF ACTION

*To The Honorable Judge of Said Court:*

Now come E. E. Forbes, E. J. Bray, F. L. Lepper, Fred Flanders, D. L. Craig, Emmett C. Dudley, R. C. Platzer, F. G. Miller, B. W. Alford, J. J. Siebeneicher, A. M. Davis, C. E. Clupka, N. S. Dunaway, Henry Radack, Milton L. Alford, George A. Vondergoltz, Fred Allen, C. L. Anderson, S. R. Asbeck, E. W. Baker, V. R. Baldwin, W. L. Barber, Lee J. Beal, J. O. Bell, Mrs. F. L. Benthall, J. W. Birdwell, John R. Bohacek, Wm. J. Beudreaux, Mrs. Louis Breaux, Ray L. Brewer, J. M. Brogan, Walter S. Brzycki, Eddie Bychlik, E. E. Carroll, J. W. Carter, Jesse R. Case, Mrs. Jesse R.

Case, J. D. Cass, Mrs. H. F. Cerwinske, E. S. Chandler, Jessie R. Chandler, E. L. Clary, Mrs. E. L. Clary, Frank J. Cleboski, W. E. Coats, Jr., Sam H. Cook, Bob Cooper, E. G. Cox, E. N. Cox, Geo. S. Cox, Jr., Mrs. Beulah C. Crews, R. D. Crews, H. D. Culpepper, R. J. Dempsey, C. O. Dinges, Merle H. Dodd, J. J. Doubrava, Mrs. K. I. Doud, J. N. Dudding, Mrs. R. Dussler, Mrs. James U. Duty, F. B. Evans, A. G. Farris, Vernon W. Farris, Mrs. Vernon W. Farris, E. H. Fitzhugh, Jr., Elroy Forbes, J. H. Forrest, Sr., J. H. Forrest, Jr., A. L. Fox, Sr., J. H. Foxworth, V. W. Frame, Marvin W. Franer, John D. Fritsch, John L. Geib, C. B. Gilman, D. D. Godwin, W. C. Golpe, Doyle E. Gore, W. W. Gouger, Mrs. W. W. Gouger, J. Grady Gray, Mrs. J. Grady Gray, W. W. Hale, Leona Harper, Q. R. Harper, R. L. Harris, J. E. Hayden, Mrs. J. E. Hayden, S. C. Hedges, H. M. Henly, L. A. Hill, Jr., Mrs. L. A. Hill, Jr., H. H. Hinson, J. H. Hobbs, Mrs. J. H. Hobbs, Robert B. Hoch, Lelia Hodge, Lillie Holbrook, C. C. Holt, Mrs. C. C. Holt, S. E. Holton, R. C. Horne, M. King Hubbert, C. H. Huber, John E. Hutzler, Jr., D. J. Idlett, Euel D. Johnson, Mrs. Pete Karsten, Sr., Curtis D. Kelly, Louis Konvicka, H. P. Kuppers, R. L. Lange, H. F. Langner, R. A. Leatherwood, Sr., Mrs. R. A. Leatherwood, Sr., Neal Lesser, E. E. Lindsay, V. C. Lroy, E. Leroy McGowan, A. E. McNiell, Mrs. A. E. McNiell, N. E. McNiell, John J. McTiernan, Jr., Allan R. Madden, D. E. Martin, Mrs. D. E. Martin, Jack M. Matthews, Mrs. Jack M. Matthews, Guy C. Mercer, Mr. and Mrs. B. R. Miller, Mrs. Joe Miller, Clift Montieth, R. Munger, Philip Nathans, Jr., Dalton L. Nevels, James W. Northrup, Wm. J. Onstad, E. F. Page, G. N. Pamplin, Mrs. G. N. Pamplin, D. V. Parish, A. S. Parks, Albert Pech, R. L. Perkins, F. J. Peters, Mrs. E. H. Phillips, Mrs. R. C. Platzer, E. E. Koklude, Emil Polansky, Joe I. Polansky, G. E. Pollock, Mrs. H. Radack, J. C. Redig, R. L. Renick, Jr., Mrs. R. L. Renick, Jr., Henry C. Richards, Mrs.

Anna Lou Richardson, Donald Robertson, Margaret Jane Rogers, O. F. Rogers, Jr., D. J. Rowe, Mrs. J. A. Rudolph, Jerome A. Rudolph, B. F. Satterwhite, B. H. Satterwhite, Nancy Satterwhite, E. B. Schadler, W. J. Schwartz, J. E. Short, D. L. Smith, R. Byron Smith, J. F. Spencer, Lynn C. Steed, W. K. Stroud, T. Tange, Lawrence T. Tilson, R. L. Tinkle, G. C. Tunnell, B. L. Tuttle, R. R. Viade, J. M. Vincent, Mrs. J. M. Vincent, Mrs. H. H. Wakehouse, Farrell L. Wallace, Mrs. Delmar R. Ward, B. L. Watson, Earl Watson, E. E. Weaver, Clem C. Welsh, R. P. Wicker, C. A. Williams, F. R. Williams, Mrs. L. B. Willis, Leslie B. Willis, Mrs. Shannon Wooderson, Mrs. Irene Woodrome, J. T. Woodrome, P. L. Woolery, Jr. herein called Plaintiffs and still complaining of the City of Houston, a municipal corporation, herein called Defendant, and file this their First Amended Original Petition in lieu of the Original Petition filed herein and in support thereof would respectfully show this Honorable Court as follows:

I.

(A) Each Plaintiff is a resident of Harris County, Texas, and is the owner of taxable property situated and lying outside of the city limits of the City of Houston but within the territory purportedly affected by Section 1 of a purported ordinance, designated by the City of Houston as Ordinance No. 3351, purported to be finally passed by the City Council of the City of Houston on December 31, 1956, a copy of which is attached to Defendant's Original Answer as Exhibit A and a copy of which is included in Exhibit B attached to such Answer. Plaintiffs are representative of a great and diverse number of other property owners within such territory who are similarly situated and all of whom constitute a class with interest similarly affected by the

purported final passage and purported passage on first, second and third readings of said Ordinance No. 3351. Plaintiffs are properly representative of such owners and bring this suit, not only in their own right individually, in the capacity of property taxpaying citizens, but as representatives of the class of all said landowners within such territory and as a class action upon their part.

(B) The defendant, City of Houston, is a municipal corporation, chartered by a Special Act of the 29th Legislature of the State of Texas, 1905, Regular Session, Special Laws, Chapter 17, Page 131 (12 Gammel's Laws) and is situated in Harris County, Texas.

II.

As alleged in Paragraph I on December 31, 1956, the Council of the City of Houston purported to pass on fourth and final reading an ordinance styled Ordinance 3351 (hereinafter referred to as Ordinance 3351 with such term meaning "proposed ordinance" when referring to the instrument prior to final passage and "purported ordinance" when referring to the instrument after final passage.) As finally passed, Ordinance 3351 is void and unconstitutional in that it was adopted in a manner contrary to the Charter of the City of Houston, statutes of the State of Texas, Section 19, Article I, and Section 3, Article I of the Constitution of Texas, and the Fourteenth Amendment to the Constitution of the United States. This ordinance purports to extend the limits of the City of Houston so as to annex a large territory surrounding said city. By such attempted and void final passage of Ordinance 3351, the Defendant, City of Houston, intends to and will cloud and encumber the title of each Plaintiff to his property situated within the territory illegally annexed by purporting to extend the

City's ad valorem taxing powers to include each Plaintiff's property and the property of the class of owners represented by them and said City will, unless said attempt is here judicially declared to be void, attempt to assess and collect ad valorem taxes by force of law against the Plaintiffs' properties, and will purport to extend said City's general municipal jurisdiction and regulation by force of law over said territory and properties, all by virtue of such void and null ordinance contrary to the City Charter and statutes in such cases made and provided. Additionally, by such void extension of authority and jurisdiction in the manner aforesaid Plaintiffs will be deprived by Defendant of property without due process of law and Plaintiffs will be denied by Defendant the equal protection of the laws, all in violation of the Fourteenth Amendment to the Constitution of the United States, and Plaintiffs will be further deprived by Defendant of property, privileges and immunities without due course of the law of the land in violation of Section 19, Article I, of the Constitution of the State of Texas and Plaintiffs, and as free men, will be denied equal rights in violation of Section 3, Article I of said Texas Constitution. Plaintiffs further say that they (and each of them) will have injury done to them (and each of them) in their lands and goods by the Defendant by said void extension of jurisdiction and therefore Plaintiffs are entitled by due course of law to remedy as provided in Article I, Section 13, of said Texas Constitution. This is shown by the record of the introduction, consideration and passage of said ordinance.

III.

Ordinance 3351 was introduced and passed on first reading at the regular meeting of the Council on October 31, 1956. The ordinance, in the form in which it was introduced

and as passed is recorded in the records of ordinances of the City of Houston, known as the Annexation Ordinance Book at pages 137 to 145, and a true and correct copy thereof as passed on first reading is attached hereto and marked Exhibit "A" and is made a part hereof for all purposes.

The Minutes of the City Council reflect certain entries relating to the passage of said ordinance on first reading and a true and correct copy of all said minute entries as they appear in City Council Minute Book EEE at page 462 is attached hereto, marked Exhibit B and is made a part hereof for all purposes. Except for the records attached hereto as Exhibits A and B, the public records of the City of Houston contain no other entry, record or minutes of any action relating to Ordinance No. 3351 by the City Council or by any committee of said council on or prior to October 31, 1956, and except as shown by Exhibits A and B no other action pertaining to said ordinance was taken by the council or by any committee of said council on or prior to October 31, 1956. The Ordinance Committee of the Council did not hold a public meeting or give notice to the public of any meeting on Ordinance 3351 on or prior to October 31, 1956, and the public was not afforded an opportunity to be heard thereon.

On November 21, 1956, the Council purported to pass Ordinance 3351, "as amended" upon second reading and said ordinance in the form in which it was passed on said date appears of record in said Annexation Ordinance Book at pages 145 through 152. A true and correct copy of Ordinance 3351 as passed on second reading and as so recorded is attached hereto, marked Exhibit C, and is made a part hereof for all purposes. The minutes of the City Council of that day reflect certain entries relating to a purported passage of said ordinance on second reading, and a true and

correct copy of all of said minute entries as they appear in City Council Minute Book FFF at pages 29, 30 and 31 are attached hereto, marked Exhibit D, and made a part hereof for all purposes. Except as shown by Exhibits C and D no other action relating to Ordinance 3351 was taken by the City Council or any committee of the Council between October 31, 1956 and November 21, 1956.

On November 25, 1956, the Houston Chronicle, a daily newspaper published in the City of Houston, published in full Ordinance 3351 as amended and passed on second reading. The minutes of the council do not reflect any action by the Council by ordinance, resolution, motion or otherwise, declaring it had amended Ordinance 3351 as desired for final passage or authorizing or directing the publication of the ordinance.

On November 28, 1956, at a regular meeting the Council again amended Ordinance 3351 so as to describe a materially different territory and as so amended passed the ordinance on third reading. Ordinance 3351 in the form in which it was passed on third reading is recorded in the Annexation Ordinance Book Number I, pages 153-160, and a true and correct copy thereof as so recorded is attached hereto, marked Exhibit E, and made a part hereof for all purposes. The minutes of the council for November 28, 1956, relating to Ordinance 3351 appear in City Council Minutes Book FFF at pages 51 and 53 and a true and correct copy of such minutes is attached hereto, marked Exhibit F, and made a part hereof for all purposes.

The Houston Chronicle, a daily newspaper published in the City of Houston, on November 29, 1956, published in full Ordinance 3351 in the form in which it was passed on third reading. The minutes of the council reflect no action of the council authorizing publication of the ordinance on Novem-

ber 29, 1956, or in any way indicating that the Council had by passing the ordinance on third reading on November 28th amended the ordinance as desired for final passage.

The minutes of the Council do not reflect any action taken by the Council relating to Ordinance 3351 from the time of its passage on third reading on November 28, 1956, until the adoption of a motion to adjourn at the regular meeting on December 26, 1956. At the close of that meeting the Council adopted a motion by Councilman Wilson that the meeting "be adjourned to 9:30 a.m., Monday, December 31, 1956, for the purpose of then considering, for its final passage Ordinance 3351 being proposed annexation ordinance", and a true and correct copy of said motion is attached hereto, marked Exhibit G, and made a part hereof for all purposes. The adoption of this motion was the first action of the Council prior to December 31, 1956 that it had amended the ordinance as desired for final passage.

As soon as possible after this action by the Council, to-wit, on December 28, 1956, Plaintiffs filed this suit attacking the validity of the purported passage of proposed Ordinance No. 3351 on first, second and third readings, seeking a declaratory judgment as to the invalidity of the purported passage of the proposed ordinance on such readings and enjoining the City of Houston from asserting any jurisdiction or exercising the tax power, police power or any other power over the territories sought to be affected by said proposed ordinance. Notwithstanding the institution of this suit, however, as heretofore alleged, the Council purported to pass said proposed ordinance on fourth and final reading at an adjourned meeting on December 31, 1956. As heretofore alleged, a copy of said ordinance as purportedly passed on fourth and final reading is attached to Defendant's Original Answer as Exhibit A. The minutes of the Council for that meeting are attached to De-

fendant's Original Answer as Exhibit C. The minutes of the Council do not reflect any action taken by the Council with reference to Ordinance 3351 subsequent to its purported passage on fourth and final reading on December 31, 1956.

## IV.

As the foregoing legislative history of Ordinance 3351 reflects, it is void for numerous reasons. Ordinance 3351 is void on its face because the attempted annexation of additional territory to the City of Houston by an unpetitioned ordinance of the City Council is completely beyond the power vested in the City of Houston and its Council by its Charter and law. Neither the statutes nor the Charter of the City of Houston contain any valid provision authorizing the Council to annex territory by ordinance without petition. Section 2b, Article I of the Charter, the only provision thereof attempting to vest power in the City of Houston to annex territory solely by action of the City Council by ordinance, is and has been declared judicially to be in direct conflict with Article 1265, R. S. 1925 and is thereby in conflict with Section 5, Article XI, Constitution of Texas and is wholly void.

## V.

As heretofore alleged, Ordinance 3351 is also void because the Ordinance Committee of the Council did not at any time on or before the introduction and passage of Ordinance 3351 on first reading on October 31, 1956, notify the public of a time and place at which it would consider said ordinance, or hold a public meeting to consider the ordinance or make any report on the ordinance on which citizens had been afforded an opportunity to be heard. To the contrary, the Ordinance Committee only gave the ordinance

an informal cursory examination in the private dining room of the Mayor on the morning of October 31, 1956, prior to the public Council meeting and did not at this meeting vote on said ordinance as a committee. No member of the public was advised of or attended this secret meeting. In these failures the Ordinance Committee grossly violated Section 2b, Article I, and Section 3, Article VII of the Charter of the City of Houston and these violations rendered Ordinance 3351 null and void.

VI.

As heretofore alleged on November 30, 1956, Ordinance 3351 as purportedly amended on third reading was published in full in The Houston Chronicle. Neither this publication nor the previous publication on November 23, 1956 was authorized by or made at the direction of the City Council and neither publication was made after Ordinance 3351 had been amended as desired by the Council for final passage. No motion, ordinance or resolution declaring that Ordinance 3351 had been amended as desired by the Council for final passage, or directing publication thereof as purportedly passed on second reading on November 21, 1956, or as purportedly passed on third reading on November 28, 1956, was adopted by the Council at the meetings on either of those days or at any meeting, regular, adjourned or special, prior to December 26, 1956. Nevertheless, as alleged, the full publication of the said purported ordinance as purportedly amended on second reading appeared without authority by the City Council in The Houston Chronicle on November 23, 1956, and as purportedly amended on third reading appeared without authority by the City Council in The Houston Chronicle on November 30, 1956. As the minutes of the Council affirmatively reflect, no action was taken by the Council declaring or indicating that pur-

ported Ordinance No. 3351 had been amended as desired by the Council for final passage until the regular meeting on December 26, 1956, when by adoption of Motion No. 7265 the Council "adjourned to 9:30 a.m. Monday, December 31, 1956, for the purpose of then considering, for its final passage, Ordinance No. 3351, being proposed annexation ordinance, * * * ". Notwithstanding the mandatory requirement of Section 2b, Article I of the Charter of the City of Houston that an annexation ordinance shall be published in a daily newspaper published in the City of Houston one time after it has been amended as desired by the Council for final passage and that it shall not thereafter be finally passed until at least thirty days have elapsed after said publication, Ordinance 3351 was not published in a daily newspaper in the City of Houston after the adoption of Motion No. 7265 on December 26, 1956, and was purportedly finally passed at an "adjourned" meeting on Monday, December 31, 1956. Not having been published after having been amended as desired by the Council for final passage or finally passed at a time at least thirty days after the publication occurring after said purported ordinance had been amended as desired by the Council for final passage, as required by the mandatory provisions of the Charter, purported Ordinance No. 3351 is void on its face. The attempted final passage of Ordinance 3351 by the Council without having published same as required by the Charter, since it neither gave citizens of the City of Houston or the affected area notice of the intention of the Council or an opportunity to be heard, denied such persons due process under the Fourteenth Amendment of the Constitution of the United States and Section 19, Article I of the Constitution of Texas.

VII.

Moreover, the arbitrary procedure by the Council in purporting to consider and adopt Ordinance 3351 was in direct

violation of Section 3, Article VII of the Charter of the City of Houston and Ordinance No. 1266 passed and approved on January 20, 1947, as amended, and a denial of due course of law under Article I, Section 19 of the Constitution of Texas and due process of law under the Fourteenth Amendment to the Constitution of the United States. Despite the clear and mandatory provisions of Section 3, Article VII of the Charter and said Ordinance No. 1266, no opportunity was given to the citizens of the City to be heard on Ordinance 3351 at the meeting at which it was introduced or at any meeting when it was considered and acted upon by the Council. Specifically, no opportunity was given to the citizens of the City to be heard on said ordinance during its consideration for passage on second reading by the Council at the regular meeting on November 21, 1956, or during its consideration for passage on so-called third reading on November 28, 1956, or at the regular meeting on December 26, 1956, when the Council determined that it had amended said ordinance as desired for final passage, or at the adjourned meeting on December 31, 1956, when the Council purported to finally pass said ordinance on fourth reading. Not only were citizens not given an opportunity to be heard at any meeting, regular, special or adjourned, at which said ordinance was considered and acted upon but at the adjourned meeting of December 31, 1956, despite the fact that this suit had been filed and process served upon the Mayor and Council, citizens of the city were arbitrarily and illegally refused permission by the Mayor and Council to be heard on said purported ordinance. Although citizens, even if they had been given notice of Motion No. 7265, would have been given only four days notice of the intention of the Council to finally pass said purported ordinance on December 31, 1956, citizens were present desiring to be heard on said ordinance and the

Mayor and Council arbitrarily and illegally refused to provide the citizens of the city a reasonable opportunity to be heard. Moreover, although one citizen, at the risk of punishment for disturbing the peace, arose and requested permission to be heard on the ordinance before it was finally adopted, the City Council acting through its presiding officer, arbitrarily denied the citizen the right to be heard, declaring that the public would not be heard on the ordinance. Representatives of these Plaintiffs were present at the time and were given no opportunity and were denied the right to be heard on the final passage of said purported ordinance.

## VIII.

As is plainly manifest in the minutes, records and Annexation Ordinance Records of the City of Houston Ordinance 3351 as purportedly passed on first reading, second reading, third reading and final passage is null and void because of the flagrant violations of the provisions of Section 2b, Article I and Section 3, Article VII of the City Charter during its consideration and passage by the Council. The description of the territory purported to be annexed to the City of Houston by Ordinance 3351, as originally introduced, amended, and purportedly finally passed, is vague, indefinite and uncertain and at all times prior to its effective date was wholly insufficient to inform any citizens of the City of Houston or of the areas adjacent to the City of Houston as to what area the Council intended to annex. Said description is so uncertain that at no time during the pendency of said proposed ordinance before the Council could any person determine what territory was described in said purported ordinance. As a consequence, the purported ordinance wholly failed to give the notice to the public as to what territory would be annexed to the City by passage of said

ordinance and no citizen could know from a reading of the ordinance at any time during its pendency what land would be finally included in the annexation. Wholly failing to give notice of the area proposed to be annexed, the purported ordinance is not only a violation of Section 2b, Article I and Section 3, Article VII of the Charter but also denies due course of the law of the land under the Texas Constitution and due process of law under the Constitution of the United States. Moreover, by the very wording of the description of the area to be annexed Ordinance 3351 was insufficient, prior to its effective date, to assert jurisdiction on behalf of the City of Houston over any of the area described by metes and bounds in said ordinance and insufficient to apprise any citizen of such described area or of the City of Houston of the territory over which the City of Houston was asserting jurisdiction.

IX.

As is also manifest from Exhibits A, C and E, attached hereto and Exhibit A attached to Defendants' Original Answer the purported ordinance is in direct violation of the provision of Section 3, Article VII of the City Charter that all ordinances shall be confined to one subject which shall be clearly expressed in the title. While the title of such purported ordinance only gives notice that the ordinance annexes certain specifically named areas, the body of the ordinance describes a much larger area of land and provides for the annexation of such additionally described lands. The title wholly fails to give notice that the ordinance attempts to annex such additionally described lands and fails to clearly express the subject of the ordinance. Consequently, as to the lands of the Plaintiffs and the lands of the class of owners represented by the Plaintiffs the purported ordinance is void, invalid and of no force and effect.

## X.

On December 30, 1949, pursuant to the provisions of Section 3, Article VII of the Charter of the City of Houston, at an election duly called and held for that purpose, the qualified voters of the City of Houston adopted the following entitled ordinance; numbered 3384:

> "AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; ANNEXING TO THE CITY OF HOUSTON ALL THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVINGS CLAUSE; AND PROVIDED THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED WILL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC. OF SAID CITY."

As evidenced by the title of said Ordinance 3384 this ordinance fixed the boundaries of the City of Houston in accordance with the metes and bounds description therein contained. Ordinance 3351 is an attempt by the Council of the City of Houston to amend the boundaries of the City of Houston as determined and fixed by the ordinance adopted by the electorate on December 30, 1949 without submitting the question of amending said ordinance to vote of the people as required by Section 9 of said Article VIIb. Not having been adopted by the Council in response to a referendum petition or by popular vote thereon and being

an amendment of said 1949 ordinance, Ordinance 3351 is ineffective to amend the boundaries fixed in said 1949 ordinance and is void.

XI.

At all times material hereto, the territory purported to be annexed by Ordinance 3351 contained several unincorporated cities having a population in excess of 5,000 inhabitants and several unincorporated cities and towns having a population of less than 5,000 inhabitants. At least three of the smaller unincorporated areas filed petitions for incorporation prior to the purported final passage of Ordinance 3351 and prior to the assertion of authority by the City of Houston over such petitioning areas. The attempt of the City of Houston by Ordinance 3351 to deprive the inhabitants of the unincorporated areas having a population of more than 5,000 inhabitants and the unincorporated areas petitioning incorporation of the right to adopt and amend a charter is in direct violation of Section 5 and Section 4, Article XI, Constitution of Texas and the general laws granting the inhabitants of such areas the right to incorporate. Inasmuch as Ordinance 3351 will deprive the citizens of these areas and these areas of constitutional and statutory rights it is void and unconstitutional.

XII.

By force of the provisions of Section 2b, Article I, Section 17b, Article IX, and Section 3, Article VIIb of the Charter of the City of Houston and Article 1176b-1, Vernon's Annotated Civil Statutes, Ordinance 3351, even if it is not invalid for all reasons assigned herein, did not become effective until the 4th day of January, 1957, and did not constitute an assertion of jurisdiction over any of the area purported to be described therein until such date. By the

express provisions of said Section 2b, Article I the territory does not become a part of the City of Houston and the inhabitants thereof are not bound by the "acts, ordinances, resolutions and regulations" of the city until an annexation ordinance is "finally passed". By virtue of the provisions of the other two charter sections cited above and Article 1176b-1 Ordinance 3351 did not become effective until it was published after passage and therefore did not constitute an assertion of jurisdiction over the area described therein and the petitions of various unincorporated areas in Harris County filed prior thereto constitute assertions of jurisdiction over the area described in such petitions prior in time to that of the City of Houston.

XIII.

Ordinance 3351 is void for the further reason that by force of Article 1182e-1 Vernon's Annotated Civil Statutes the adoption of said ordinance results in the assumption of the bonded indebtedness of approximately 29 Water Control and Improvement Districts and Fresh Water Supply Districts lying within the territory purported to be annexed by said ordinance and thereby the creation of an obligation of the City of Houston without the Controller having certified that there were funds in the treasury available to pay such obligation or that such funds would be received in the treasury prior to the maturity of said obligation, in violation of Section 19a, Article II of the Charter of the City of Houston.

XIV.

Pleading in the alternative, Plaintiffs allege that if the publication of Ordinance 3351, as purportedly amended on second reading, in The Houston Chronicle on November 23, 1956, was made pursuant to the authorization and direction

of the Council after said proposed ordinance had been amended as desired for final passage, the Council at the regular meeting on November 28, 1956, in total disregard and direct violation of the Charter of the City of Houston, abandoned said proposed ordinance as purportedly passed on second reading and as published in The Houston Chronicle on November 23, 1956, and accepted the introduction of a new proposed ordinance describing in the body thereof substantially different territory from that territory described in the body of proposed Ordinance 3351 as published on November 26, 1956. This new proposed ordinance was, on November 28, 1956, purportedly passed on first reading by the City Council, although the new proposed ordinance had not at that time (or at any time subsequent thereto) been reported upon by the Ordinance Committee in accordance with the requirements of the City Charter. This was accomplished by the City Council of the Defendant under the fiction and pretense of passing Ordinance No. 3351 on third reading *after further amendment*, although at that time, November 28, 1956, proposed Ordinance 3351 had been supposedly amended as desired by Council for final passage and had been published to the public on November 23, 1956. The so-called proposed Ordinance 3351 "on third reading" was and is actually a new proposed ordinance, substantially different from proposed Ordinance No. 3351 on second reading as published, and said new proposed ordinance has never been reported upon by the Ordinance Committee in accordance with the requirements of the Charter, nor has said Committee ever held a public meeting at which citizens of the City had reasonable opportunity to be heard, on said new proposed ordinance.

Still pleading in the alternative, Plaintiffs allege that notwithstanding the total invalidity and illegality of the action taken by the Council as set out in the immediately preceding

paragraph, the Council caused to be published in The Houston Chronicle on November 29, 1956, a full publication of the new proposed ordinance as first passed on November 28, 1956, falsely and fictitiously calling same proposed Ordinance 3351, "passed on third reading as further amended." And on December 31, 1956, the Council purported to and attempted to declare said void new proposed ordinance finally passed so as to allegedly annex the additional territory to the City of Houston. Inasmuch as said new proposed ordinance was never at any time reported upon by the Ordinance Committee as required by the mandatory provisions of Section 2b, Article I of the Charter it is void on its face.

## PRAYER

WHEREFORE, it appearing that the Defendant has appeared and answered herein, Plaintiffs pray this Honorable Court:

(1) That this Honorable Court enter its judgment in favor of Plaintiffs against Defendant, declaring:

(a) That Section 2b, Article I of the Charter of the City of Houston was repealed by Article 1265 R. S. 1925 and is null and void.

(b) That the purported final passage of the ordinance styled Ordinance No. 3351 on December 31, 1956, was and is null and void for violation of the Charter of the City of Houston, the Statutes and the Constitution of Texas, and the Constitution of the United States, all as set out above.

(c) That the purported first passage of proposed Ordinance 3351 on October 31, 1956, was and is null and void for violations of the Charter of the City of Houston and the statutes, all as set out above, and said proposed ordinance on first reading is void.

(d) That the purported second passage of proposed Ordinance 3351 "as amended" on November 21, 1956, was and is null and void for violations of the Charter of the City of Houston and the statutes, all as set out above and the proposed ordinance on second reading is void.

(e) That the purported passage on third reading of proposed Ordinance 3351 on November 28, 1956, was and is null and void for violation of the Charter of the City of Houston and the Statutes of Texas, all as set out above, and the proposed ordinance on third reading is void.

(f) That the threatened extension of taxing power and general jurisdiction by the Defendant into the territory described in Paragraph 1 hereof by virtue of said void proposed ordinance is wholly unlawful. Additionally, that the Defendant, by such unlawful action, is violating the constitutional rights of Plaintiffs as set out above.

(2) That in the alternative this Honorable Court enter its judgment in favor of Plaintiffs against Defendants, declaring:

(a) That the Defendant caused proposed Ordinance No. 3351 as purportedly amended on second reading to be published in full in The Houston Chronicle on November 23, 1956, after the Council had amended the said proposed ordinance as desired for final passage and that having amended said proposed Ordinance No. 3351 as desired for final passage the purported passage of said ordinance on third reading on November 28, 1956, was a new proposed ordinance, that the Ordinance Committee did not pass upon said new proposed ordinance prior to its introduction or at any time thereafter and that the purported passage of said new ordinance on November 28, 1956, was and is null and void

because in violation of the charter of the City of Houston and the statutes, all as set out above.

(b) That the purported final passage of said new ordinance on December 31, 1956, was and is null and void for violation of the Charter of the City of Houston and the statutes, all as set out above.

(3) That this Honorable Court issue its writ of injunction perpetually restraining and enjoining the Defendant from attempting to assess and collect ad valorem taxes against the properties of the Plaintiffs and the class of owners represented by them lying and being situated in the territory described in Section 1 hereof and further perpetually enjoining and restraining the Defendant from purporting or attempting to extend its general municipal jurisdiction into such territory. In connection with this prayer for injunctive relief, Plaintiffs say they will be irreparably injured in their vested property rights, privileges and immunities by Defendant's threatened void annexation, for which they have no adequate remedy at law, as is manifest from the foregoing allegations of this Petition.

(4) That Plaintiffs recover all costs in this behalf expended and have such other and further relief special and general, in law or equity, to which they may be justly entitled.

(Signatures of Counsel)

## SECOND CAUSE OF ACTION

*To Said Honorable Court:*

Now come Fred Flanders, C. H. Peirsol, C. F. Oakley, R. W. Doolan and Ross H. Clarke, hereinafter called Plaintiffs, complaining of the City of Houston, a municipal corporation, and Roy B. Oakes, City Controller of said City,

hereinafter called Defendants, and for cause of action would respectfully show this Honorable Court as follows:

I.

The Plaintiffs are residents of Harris County, Texas, and the Defendant City of Houston is a municipal corporation, chartered by a Special Act of the 29th Legislature of the State of Texas, 1905, Regular Session, Special Laws, Chapter 17, Page 131 (12 Gammel's Laws) and is situated in Harris County, Texas. The Defendant Oakes is a resident of Harris County, Texas, and is sued in his official capacity as above set forth.

II.

The Plaintiffs are citizens of the City of Houston and property taxpayers of the City of Houston and maintain this action to restrain the disbursing officers of said City from paying illegal and unathorized bills, claims and demands (as hereinafter set forth) against said City, which is the Plaintiffs' right conferred upon them by statute, to-wit, Article IX, Section 1 of the Special Act of the 29th Legislature, 1905, Regular Session, Special Laws, Chapter 17, Page 131 (12 Gammel) known as the Charter of the City of Houston.

III.

Plaintiffs adopt by reference all of Paragraphs II through VIII, inclusive, and X through XIV contained in the First Cause of Action above set out, as fully as if such paragraphs were set out at length in this Second Cause of Action, Plaintiffs adopting every allegation contained therein as allegations in this Second Cause of Action.

## IV.

Plaintiffs specially allege that the Defendant City of Houston is preparing and planning to take certain illegal and unauthorized action by virtue of the void and invalid purported passage and adoption of the proposed ordinances set forth above and the void and invalid purported extension of the City limits of Houston in the annexation of the territory thereto described in Paragraph I of the First Cause of Action, to-wit, the City of Houston is purporting and pretending to annex the entire territory of numerous Fresh Water Supply Districts and Water Control and Improvement Districts located within Harris County, Texas, including but not limited to Harris County Water Control and Improvement District No. 59, No. 54, No. 53, No. 51, No. 49, No. 47, and No. 24. Said Fresh Water Supply Districts and Water Control and Improvement Districts have presently outstanding an enormous bonded indebtedness, the exact amount of which is unknown to the Plaintiffs but is well known to the Defendants, but which Plaintiffs allege to be several million dollars, which indebtedness is in the form of bonds issued by said Water Control and Improvement Districts which bonds are supported by the levy of ad valorem taxes against the properties situated within such Districts. The Defendant City of Houston and the Defendant Oakes as disbursing officier of said City are preparing and planning to take over the obligations of said Districts under the invalid pretense that said Districts have been annexed to and absorbed by the Defendant City of Houston and, unless restrained by this Court, the Defendant City of Houston and its disbursing officer, Defendant Oakes, will, on or before the first day of April, 1957, commence paying the principal and interest of said bonds owed by said Water Control and Improvement Districts and Fresh Water Supply Districts by virtue of such false and pretended

annexation and will pay other illegal and unauthorized bills, claims and demands against the City in the form of diverse debts and general obligations owed by said Fresh Water Supply Districts and Water Control and Improvement Districts, all contrary to the Constitution and laws of the State of Texas and contrary to the Charter of the City of Houston.

V.

Pleading in the alternative, Plaintiffs adopt the allegations in Paragraphs i, ii, III and IV of the Second Cause of Action and allege that by virtue of the proposed ordinance purporting to extend the limits of the City of Houston so as to annex additional territory thereto the Defendant City of Houston is preparing and planning to assume and pay indebtedness in the amount of several million dollars owed by Water Control and Improvement Districts and Fresh Water Supply Districts located within the area purported to be annexed. The Defendant City of Houston plans, and unless enjoined herein, will assume the indebtedness of such Water Control and Improvement Districts and Fresh Water Supply Districts although the assumption of such debts by the City of Houston has not been submitted to an election as required by Section 3, Article VI and Section 3a, Article VI, Constitution of Texas. Not having held the election required by these sections of the Constitution of Texas the attempt by the City of Houston to assume the debts of said Districts will constitute an unauthorized and illegal expenditure of the funds of the City of Houston.

VI.

Still pleading in the alternative, it is alleged that the City of Houston under the guise of the authority purportedly conferred by Article 1182e-1, Vernon's Annotated Civil Statutes is preparing and planning to assume and pay indebtedness in the amount of several million owed by Water

Control and Improvement Districts and Fresh Water Supply Districts located within the area described in Ordinance 3351. Said Article 1182c-1 is in direct conflict with Article III, Section 56, and Article VI, Section 3 and Section 3a of the Constitution of Texas and is void. Nevertheless, unless enjoined herein, under the authority of said void statute the City of Houston plans to assume the indebtedness of such districts and to levy taxes to pay the indebtedness thereof. Such tax and expenditure of funds therefrom will constitute an unauthorized and illegal expenditure of the funds of the City of Houston.

## PRAYER

WHEREFORE, Plaintiffs pray this Honorable Court:

(1) That the Plaintiffs have the same declaratory relief against the Defendant which is set out in subparagraph (1) of the Prayer contained in the First Cause of Action which Prayer is here adopted by reference.

(2) That the Defendant City of Houston and the Defendant Roy B. Oakes as City Controller be perpetually enjoined and restrained from paying or attempting to pay any portion of such illegal and unauthorized bills, claims and demands against the City in the form of the bonded indebtedness of any Fresh Water Supply District or Water Control and Improvement District purported to be annexed by said void proposed ordinances or any other such illegal and unauthorized bill, claim and demand against the City in the form of any claimed or pretended debt or general obligation owed by any such District, so purported to be annexed.

(3) That the Plaintiffs recover all costs in this behalf expended and have such other and further relief, special

and general, in law or equity, to which they may be justly entitled.

(Signatures of Counsel)

(CLERK'S EXPLANATORY NOTE — By direction, Plaintiffs' Exhibits A through G inclusive have been omitted from this transcript to avoid unnecessary duplication as the same exhibits appear as Plaintiff's Exhibits A through G inclusive attached to Plaintiff's Affidavit of Will Sears, said exhibits appearing on Pages 80 through 117 of this Transcript.)

FILED February 11, 1957.

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**CLERK'S NOTE ON FILING OF ORIGINAL PETITION.** In accordance with the order of the Supreme Court entered January 20, 1944 under Rule 376-a, TRCP, since the original petition is not included in this transcript, it is noted that the date on which the original petition was filed was December 28, 1956, as shown by the records in the office of the District Clerk of Harris County, Texas.

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Filed Feb. 14, 1957

## DEFENDANTS' FIRST AMENDED ORIGINAL ANSWER

### Defendant's First Amended Original Answer to the First Cause of Action of Plaintiffs' First Amended Original Petition

NOW COMES the defendant, the City of Houston, and files this its first amended original answer in reply to the first cause of action of plaintiffs' first amended original petition and respectfully says:

**Special Exceptions**

1.

Defendant specially excepts to plaintiffs' first cause of action set forth in their first amended original petition because the same is insufficient in law and cannot be maintained against this defendant as it is a collateral attack by private citizens upon an annexation ordinance which is not void on its face and as such action can be maintained only in a direct suit in the nature of a quo warranto proceeding in which the State of Texas is a party.

2.

Defendant specially excepts to plaintiffs' alleged first cause of action because there is a misjoiner of said alleged first cause of action with the alleged second cause of action and also there is a misjoiner of parties plaintiff and defendant with the parties to the alleged second cause of action, and, therefore, said first cause of action and second cause of action cannot both be maintained in this proceeding.

3.

Defendant specially excepts separately to each of paragraphs II, III, V, VI, VII, VIII, IX, XI XII, XIII, and XIV of plaintiffs' first amended original petition because the allegations in each of said paragraphs constitute a collateral attack upon said Ordinance No. 3351, which is not void on its face, and as such attack can be maintained only in a direct suit in the nature of a quo warranto proceeding in which the State of Texas is a party.

4.

Defendant specially excepts to the allegations in paragraph IV of said petition because said allegations are in-

sufficient in law to state any claim against this defendant and are incorrect as a matter of law.

5.

Defendant specially excepts to the allegations of paragraph X of said petition because the same are insufficient in law to state any claim against this defendant.

**General Denial**

6.

Defendant, without waiving the foregoing special exceptions but still insisting and relying upon same, denies all and singular the allegations contained in the first cause of action of said plaintiffs' first amended original petition.

**Special Answers**

7.

For special answer herein, defendant says that this action by plaintiffs as set forth in the first cause of action in said petition cannot be maintained against this defendant because it is a collateral attack by private citizens upon an annexation ordinance passed finally by the City Council of Houston on December 31, 1956, that defendant had the power and legal authority to annex the area described in said ordinance and that the complaint by plaintiffs of alleged irregularities in the procedure followed by the City Council in carrying out such power or authority can be made only in a direct suit in the nature of a quo warranto proceeding in which the State of Texas is a party.

8.

For further special answer, this defendant says that said Ordinance No. 3351, which was passed finally by the City

Council on December 31, 1956, is a valid and legally effective ordinance (copy of said ordinance is attached to defendant's original answer as Exhibit "A" and is adopted and made a part hereof), that the City Council complied fully with all mandatory requirements of the Charter of Houston in passing said ordinance, that the same was published in a daily newspaper in the City of Houston, Texas, at least thirty (30) days prior to the day it was finally passed on December 31, 1956 (copy of said publication is attached to defendant's original answer as Exhibit "B" and is adopted and made a part hereof), that in amending Ordinance No. 3351 and subsequently publishing the same on November 29, 1956, the City Council did not intend to and did not in fact abandon the ordinance which was first passed on October 31, 1956, but the City Council took all action as was necessary under the Charter of the City of Houston to make said ordinance valid and effective to annex the area described therein upon its final passage on December 31, 1956. (Copy of the Minutes of the Meeting of the City Council on such date are attached to defendant's original answer as Exhibit "C" and are adopted and made a part hereof.)

WHEREFORE, defendant prays that plaintiffs take nothing herein and that it recover all of its costs in this behalf expended.

(Signatures of Counsel)

**Defendants' First Amended Original Answer to the Second Cause of Action of Plaintiffs' First Amended Original Petition**

NOW COME the defendants, the City of Houston and Roy B. Oakes, City Controller of the City of Houston, and file this their first amended original answer in reply to the

second cause of action of plaintiffs' first amended original petition heretofore filed herein and respectfully say:

**Special Exceptions**

1.

Defendants specially except to plaintiffs' second cause of action set forth in their first amended original petition because the same is insufficient in law and cannot be maintained against these defendants, or either of them, as it is a collateral attack by private citizens upon an annexation ordinance which is not void on its face and as such action can be maintained only in a direct suit in the nature of a quo warranto proceeding in which the State of Texas is a party.

2.

Defendants specially except to plaintiffs' second cause of action set forth in their first amended original petition because there is a misjoinder of the second cause of action with the alleged first cause of action and also there is a misjoinder of the parties plaintiff and defendant with the parties to the alleged first cause of action, and, therefore, said alleged second cause of action cannot be maintained against these defendants in this proceeding.

3.

Defendants specially except to the allegations of Paragraph III of said petition for the reason that the same constitute a collateral attack upon said annexation ordinance which is not void on its face and as such allegations are insufficient in law since they do not establish that there was any failure to comply with any mandatory requirement of the Charter of the City of Houston.

4.

Defendants specially except to Paragraph IV of said petitior because said allegations are insufficient in law to state any claim against these defendants, or either of them, for each of the following reasons:

(i) Such allegations constitute an attempt by private citizens to maintain a collateral attack upon an annexation ordinance by the City of Houston which is not void on its face;

(ii) The defendant, the City of Houston has the authority under Article 1182c-1 of the Texas Revised Civil Statutes (1925) and under other laws of the State of Texas to assume the payment of and to pay the bonded indebtedness of the Fresh Water Supply Districts and Water Control and Improvement Districts referred to in said paragraph of plaintiffs' original petition.

5.

Defendants specially except to the allegations of Paragraph V of said petition because the same are insufficient in law to state any cause of action against these defendants, or either of them, for each of the following reasons:

(i) Such allegations constitute an attempt by private citizens to maintain a collateral attack upon an annexation ordinance by the City of Houston which is not void on its face;

(ii) The defendant, the City of Houston has the authority under Article 1182c-1 of the Texas Revised Civil Statutes (1925) and under other laws of the State of Texas to assume the payment of and to pay the bonded indebtedness of the Fresh Water Supply Districts and Water Control and Improvement Districts referred to in said paragraph of plaintiffs' original petition:

(iii) It does not appear from said allegations that the City Council of the City of Houston failed to comply with any mandatory requirements of the Charter.

6.

Defendants specially except to Paragraph VI of said petition because the allegations therein are insufficient in law to state any claim against these defendants, or either of them.

**General Denial**

7.

Defendants, without waiving the foregoing special exceptions but still insisting and relying on the same, deny all and singular the allegations contained in the second cause of action of said plaintiffs' first amended original petition.

**Special Answers**

8.

For special answer herein, defendants say that this action by the plaintiffs as set forth in the second cause of action in said original petition cannot be maintained against these defendants because it is a collateral attack by private citizens upon an annexation ordinance passed finally by the City Council of Houston on December 31, 1956, that the City of Houston had the power and legal authority to annex the area described in said ordinance and that the complaint by plaintiffs of alleged irregularities in the procedure followed by the City Council in carrying out such power or authority can be made only in a direct suit in the nature of a quo warranto proceeding in which the State of Texas is a party.

9.

For further special answer, these defendants say that Ordinance No. 3351, which was passed finally by the City

Council on December 31, 1956, is a valid and legally effective ordinance (copy of said ordinance is attached as Exhibit "A" to defendants' original answer and is adopted and made a part hereof), that the City Council complied fully with all mandatory requirements of the Charter of Houston in passing said ordinance, that the same was published in a daily newspaper in the City of Houston, Texas, at least thirty (30) days prior to the day it was finally passed on December 31, 1956 (copy of said publication is attached as Exhibit "B" to defendants' original answer and is adopted and made a part hereof), that in amending Ordinance No. 3351 and subsequently publishing the same on November 29, 1956, the City Council did not intend to and did not in fact abandon the ordinance which was first passed on October 31, 1956, but the City Council took all action as was necessary under the Charter of the City of Houston to make said ordinance valid and effective to annex the area described therein upon its final passage on December 31, 1956. (Copy of the Minutes of the Meeting of the City Council on such date are attached as Exhibit "C" to defendants' original answer and is adopted and made a part hereof.)

10.

For further special answer, defendants say that the City of Houston has the authority under Article 1182c-1 of the Texas Revised Civil Statutes (1925) and under other laws of the State of Texas to assume the payment of bonded indebtedness of the Fresh Water Supply Districts and Water Control and Improvement Districts referred to in plaintiffs' first amended original petition and said defendants have the right and authority under such laws to abolish said Districts and to pay all obligations owing by the Districts.

WHEREFORE, defendants pray that plaintiffs take nothing herein and that they recover all of their costs in this behalf expended.

(Signatures of Counsel)

(CLERK'S EXPLANATORY NOTE — By direction, Defendants' Exhibits A through C attached to the foregoing amended answer have been omitted from this Transcript to avoid unnecessary duplication as the same exhibits bearing the same designations appear as Defendants' Exhibits A through C attached to the (Defendants') affidavit of George D. Neal, said exhibits appearing on Pages 39 through 63 of this Transcript.)

FILED February 14, 1957.

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Filed Jan. 15, 1957

## PLAINTIFFS' REQUEST FOR JURY

The Plaintiffs in the above styled and numbered cause, before appearance day therein, present their application for a jury and herewith pay the jury fee provided by law.

(Signature of Counsel)

FILED January 15, 1957.

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Filed Jan. 17, 1957

## DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

*To The Honorable Judge of Said Court:*

NOW COMES the defendant, the City of Houston, in the above entitled and numbered cause and without waiving its special exceptions filed herein to plaintiffs' original petition, but insisting and relying upon same, files this Motion for Summary Judgment with respect to the First

Cause of Action set forth in plaintiffs' original petition and moves the Court to enter a summary judgment herein with respect to such cause of action under Rule 166-A of the Texas Rules of Practice and Procedure in Civil Actions, denying plaintiffs any relief and rendering judgment for this defendant, because there is no genuine issue as to any material fact and defendant is entitled to judgment as a matter of law, for each of the following reasons:

1.

This action by plaintiffs cannot be maintained as it is a collateral attack by private citizens upon an annexation ordinance passed finally by the City Council of Houston on December 31, 1956, and such ordinance is not void on its face as the Council had the power and authority to annex the area described therein. (Copy of said ordinance is attached hereto as Exhibit "A" and made a part hereof.)

2.

The plaintiffs do not assert in their original petition that the defendant lacked the power or legal authority to annex the area described in the ordinance but they complain that there were irregularities in the procedure followed by the City Council in carrying out such power or authority. This complaint can be made only in a direct suit in the nature of a quo warranto proceeding in which the State of Texas is a party.

3.

The City Council complied with all mandatory requirements of the Charter of the City of Houston in the passage of such ordinance and the same is a valid ordinance which has the legal effect of annexing the area described therein. (A copy of the publication of said ordinance is attached hereto as Exhibit "B" and a copy of the Minutes of City Council on final passage thereof is attached hereto as Exhibit "C," both of which are made a part hereof.)

This motion is based upon the pleadings filed herein, the exhibits attached to such pleadings and this motion, and the Charter of the City of Houston.

WHEREFORE, said defendant prays that upon hearing and consideration of this motion, a summary judgment be entered with respect to the First Cause of Action set forth in plaintiffs' original petition denying plaintiffs any relief and rendering judgment in favor of this defendant, and for costs and such other and further relief as the Court may deem proper.

(Signatures of Counsel)

NOW COME the defendants, the City of Houston and Roy B. Oakes, defendants in the Second Cause of Action asserted in plaintiff's (Fred Flanders) original petition in the above entitled and number cause, and without waiving the foregoing Motion for Summary Judgment and the special exceptions filed herein to plaintiff's original petition, but insisting and relying upon same, file this Motion for Summary Judgment with respect to the Second Cause of Action set forth in plaintiff's original petition and move the Court to enter summary judgment herein with respect to such cause of action under Rule 166-A of the Texas Rules of Practice and Procedure in Civil Actions, denying plaintiff any relief and rendering judgment for these defendants, because there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law for each of the following reasons:

1.

This action by plaintiff cannot be maintained as it is a collateral attack by a private citizen upon an annexation ordinance passed finally by the City Council of Houston on December 31, 1956, and such ordinance is not void on its

face as the Council has the power and authority to annex the area described therein. (Copies of said ordinance is attached hereto as Exhibit "A" and made a part hereof.)

2.

The plaintiff does not assert in his original petition that the City of Houston lacked the power or legal authority to annex the area described in the ordinance but he complains that there were irregularities in the procedure followed by the City Council in carrying out such power or authority. This complaint can be made only in a direct suit in the nature of a quo warranto proceeding in which the State of Texas is a party.

3.

The City Council complied with all mandatory requirements of the Charter of the City of Houston in the passage of such ordinance and the same is a valid ordinance which has the legal effect of annexing the area described therein. (A copy of the publication of said ordinance is attached hereto as Exhibit "B" and a copy of the Minutes of the City Council on final passage thereof is attached hereto as Exhibit "C", both of which are made a part hereof.)

4.

The defendant, the City of Houston, has the authority under Article 1182c-1, Texas Revised Civil Statutes (1925) and under other laws of the State of Texas to assume the payment of bonded indebtedness of the Fresh Water Supply Districts and Water Control and Improvement Districts referred to in plaintiff's original petition and said defendant has the right and authority under such laws to abolish such Districts and to pay all obligations owing by the Districts.

This motion is based upon the pleadings filed herein, the exhibits attached to such pleadings and this motion, and the Charter of the City of Houston.

WHEREFORE, defendants pray that upon hearing and consideration of this motion, a summary judgment be entered denying plaintiff any relief and rendering judgment in favor of these defendants, and for costs and such other and further relief as the Court may deem proper.

(Signatures of Counsel)

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## EXHIBIT "1"

THE STATE OF TEXAS )
COUNTY OF HARRIS )

BEFORE ME, the undersigned authority, on this day personally appeared GEORGE NEAL, who being by me first duly sworn upon oath deposes and says:

That he is the City Attorney for the City of Houston and was the City Attorney during the calendar year 1956, and that he has personal knowledge of the facts set out in this affidavit; (1) that the Ordinance No. 3351 attached hereto as Exhibit "A" is a true and correct copy of said ordinance which was passed finally by the City Council of the City of Houston on December 31, 1956; (2) that Exhibit "B" attached hereto is an affidavit of publication made by J. L. DuRoss and Ordinance No. 3351 attached to such affidavit is a true and correct copy of the ordinance which was published in "The Houston Chronicle" on November 29, 1956; and (3) that Exhibit "C" attached hereto is a true and correct copy of the Minutes of the City Council of the City of Houston which were made at the time of the final passage of Ordinance No. 3351 on December 31, 1956.

/s/ GEORGE NEAL

SWORN AND SUBSCRIBED TO before me on this 17th day of January, 1957.

/s/ PAULA COE

Notary Public in and for
Harris County, Texas

PAULA COE

Notary Public, in and for Harris County, Texas
My Commission Expires June 1, 1957.

[NOTARIAL SEAL]

## EXHIBIT "A"

ORDINANCE NO. 3351

AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS, AND ANNEXING TO THE CITY OF HOUSTON ALL OF THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; FURTHER EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON BY ADDING CERTAIN OTHER ADDITIONAL TERRITORY THERETO, TO-WIT: THE AREA OR AREAS COMPRISING (A) THE CITY'S SAN JACINTO RESERVOIR (KNOWN AS LAKE HOUSTON), (B) THE CITY'S SAN JACINTO RIVER DAM AND APPURTENANT LANDS; AND (C) THE CITY'S NEW WEST WATER CANAL AND THE RIGHT-OF-WAY THEREFOR; PROVIDING THAT SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVING CLAUSE; AND PROVIDING THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC., OF SAID CITY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1: That the boundaries and limits of the City of Houston are hereby extended so as to embrace and in-

clude all of the lands and area lying within the following described boundaries and comprised within the following limits (save and except only such of the land lying within such boundaries and limits as is described in the exceptions set forth or stated in Section 2 of this ordinance), to-wit:

BEGINNING at a point where the northerly right-of-way line of Westheimer Road intersects the westerly boundary of the Rivercrest Addition;

THENCE northerly along the westerly line of Rivercrest Addition, to the center line of Buffalo Bayou;

THENCE westerly along the center line of Buffalo Bayou, to the easterly line of the Wm. G. Perkinson Survey;

THENCE northerly along the easterly line of the Wm. G. Perkinson Survey, to the southerly line of U. S. Highway No. 90 (being often referred to as the Katy Road);

THENCE easterly along the southerly line of U. S. Highway No. 90, to the easterly line of the Britt Moore Road extended;

THENCE northerly along the easterly line of Britt Moore Road and the said Britt Moore Road extended, to the southerly line of Clay Road;

THENCE easterly along the southerly line of Clay Road, to the easterly line of Gessner Road;

THENCE northerly along the easterly line of Gessner Road and Gessner Road extended, to the northeasterly line of U. S. Highway No. 290 (often referred to as the Hempstead Highway);

THENCE northwesterly along the northeasterly line of U. S. Highway No. 290, to the center line of Cole's Creek;

THENCE easterly along the center line of Cole's Creek, to the easterly line of the Fairbanks-North Houston Road;

THENCE northerly along the easterly line of the Fairbanks-North Houston Road, to the southerly line of the West Little York Road;

THENCE easterly along the southerly line of the West Little York Road to the easterly line of the Fort Worth and Denver City (Chicago, Rock Island & Pacific) Railroad;

THENCE southeasterly along the northeasterly line of the Fort Worth and Denver City (Chicago, Rock Island & Pacific) Railroad, to the southerly line of Pearson Road;

THENCE easterly along the southerly line of Pearson Road, to the westerly line of the Sam W. Allen Survey;

THENCE northerly along the westerly line of the Sam W. Allen Survey, to the southerly line of Donovan Street extended westerly;

THENCE easterly along the southerly line of Donovan Street extended westerly and the south line of Donovan Street, to the easterly line of North Shepherd Drive;

THENCE northerly along the easterly line of North Shepherd Drive, to the southerly line of Little York Road;

THENCE easterly along the southerly line of Little York Road, to the center line of Hall's Bayou;

THENCE northerly along the center line of Hall's Bayou, to the northerly line of Pinewood Village, Section 6, extended westerly;

THENCE easterly along the northerly line of Pinewood Addition, Section 6, extended westerly and the northerly line of said Pinewood Addition, Section 6, to the northeasterly corner of said Pinewood Addition, Section 6;

THENCE southerly along the easterly line of Pinewood Addition, Section 6 and Section 3, and along said line extended southerly, to the southerly line of Little York Road;

THENCE easterly along the southerly line of Little York Road, to the westerly line of U.S. Highway No. 59;

THENCE southwesterly and southerly along the westerly line of U. S. Highway No. 59, to the center line of Hall's Bayou;

THENCE easterly along the center line of Hall's Bayou, to the westerly line of Fontaine Place Addition, Section 2;

THENCE northerly along the westerly line of Fontaine Place Addition, Sections 2 and 1, to the northerly line and northwesterly corner of Fontaine Place Addition, Section 1;

THENCE easterly along the northerly line of Fontaine Place Addition, Sections 1, 3 and 4, to the northeasterly corner of the said Fontaine Place Addition, Section 4;

THENCE easterly in a direct line, to the northwesterly corner of the Scenic Woods Addition;

THENCE easterly along the northerly line of the said Scenic Woods Addition, to a point where such line intersects or joins the westerly boundary line of the most northerly portion of the said Scenic Woods Addition (said point being the northeasterly corner of Lot No. 2 in Block No. ~~26 of~~ the said Addition and being in the westerly line of the Eli Noland Survey);

THENCE northerly along the westerly line of the Eli Noland Survey, to the northwesterly corner of the Eli Noland Survey;

THENCE easterly along the northerly line of the Eli Noland Survey, to the northeasterly corner of the Eli Noland Survey;

THENCE southerly along the easterly line of the Eli Noland Survey, to the center line of Hall's Bayou;

THENCE southeasterly along the center line of Hall's Bayou, to the center line of Green's Bayou;

THENCE meandering southerly and easterly along the center line of Green's Bayou, to the center line of Jordan's Gully;

THENCE northerly and easterly along the center line of Jordan's Gully (being also the westerly line of Water Control and Improvement District No. 32) to a point located west 1,476.19 feet from the northwesterly corner of Home Owned Estates, Section Two (said point being the northwesterly corner of Water Control and Improvement District No. 32);

THENCE east along the northerly line of Water Control and Improvement District No. 32 to the northwest corner of Home Owned Estates, Section 2, and continuing easterly along the northerly line of Home Owned Estates, Sections 2 and 1, to the northeast corner of Home Owned Estates, Section 1 (said point being the northeasterly corner of Water Control and Improvement District No. 32);

THENCE southerly along the easterly line of Home Owned Estates, Section 1, and along said line extended southerly, to the northerly right-of-way line of the Houston North Shore (Missouri Pacific) Railroad;

THENCE westerly along the northerly line of the Houston North Shore (Missouri-Pacific) Railroad, to the westerly bank of Green's Bayou;

THENCE southerly along the westerly bank of Green's Bayou (being along the easterly boundary of Water Control and Improvement District No. 11), to the southeast corner of Water Control and Improvement District No. 11 (being the southeast corner of the Carrie E. Seureau 397.5 acre tract);

THENCE north 89° 52′ west with the south line of Water Control and Improvement District No. 11 (said line being also the south line of the said Carrie E. Seureau 397.5-acre tract and being also coincident with an easterly projection of the center line of Industrial

Road and with the center line of Industrial Road), to a point which is in the present City limit line of the City of Houston, said point being 800 feet east of the easterly line of Federal Road;

THENCE southerly parallel with and 800 feet from the easterly line of Federal Road, to a point located 2500 feet from the center line of the Houston Ship Channel said distance of 2500 feet being measured northerly from and at right angles to the center line of the Houston Ship Channel;

THENCE westerly parallel with and 2500 feet from the center line of the Houston Ship Channel, to a point on the southerly line of Clinton Road;

THENCE westerly along the southerly line of Clinton Road, to the easterly line of the John Brown Survey and the westerly line of the Ezekiel Thomas Survey;

THENCE southerly along the easterly line of the John Brown Survey, to the southerly water's edge of Buffalo Bayou and the Houston Ship Channel;

THENCE in a southeasterly direction along the south water's edge of Buffalo Bayou and the Houston Ship Channel, to a point located 300 feet from and measured southeasterly at right angles to the center of Sims Bayou, being on the south water's edge of Buffalo Bayou Old Channel on the southerly side of Clinton Island;

THENCE in a southeasterly direction parallel with and 300 feet from the center of Sims Bayou, to a point 2500 feet from, measured southerly from and at right angles, to the center line of the Houston Ship Channel;

THENCE in an easterly direction parallel with and 2500 feet from the center line of the Houston Ship Channel, to its point of intersection with the easterly line of Lot 1 and the westerly line of Lot 3 of Outlot 35, Pasadena Townsite;

THENCE southerly along the westerly line of Lot 3 and the easterly line of Lots 1 and 2 of Outlot 35, Pasadena Townsite, and continuing across the Public Belt Railway right-of-way, to the northeasterly corner of Lot 12, Outlot 35, Pasadena Townsite, the same being in the westerly right-of-way line of Houston Lighting and Power Company Road;

THENCE southerly along the westerly right-of-way line of the Houston Lighting and Power Company Road, to the northerly right-of-way line of the Houston-La Porte Road, State Highway No. 225;

THENCE westerly along the northerly right-of-way line of the Houston-La Porte Road, State Highway No. 225, to the westerly line of Vince Street extended across Houston-La Porte Road, State Highway No. 225;

THENCE southerly across the Houston-La Porte Road, State Highway No. 225, and along the westerly right-of-way line of Scarborough (formerly Vince) Street, to the northerly right-of-way line of Southmore Avenue extended;

THENCE westerly along the northerly line of Southmore Avenue extended, to its point of intersection with the westerly right-of-way line of the Allen-Genoa Road;

THENCE southeasterly along the southwesterly right-of-way line of the Allen-Genoa Road, to its intersection with the northerly right-of-way line of Queens Road;

THENCE westerly along the northerly right-of-way line of Queens Road, to a point 60 feet northerly of the northwesterly corner of Block 8 and the northeasterly corner of Block 9 of the South Houston Gardens No. 1 Subdivision;

THENCE southerly across Queens Road, to the northwesterly corner of Lot 8 and the northeasterly corner of Lot 9 of South Houston Gardens No. 1 Subdivision;

THENCE along the westerly lines of Lots 8, 15, 30, 37, 52, 59, and 74 of South Houston Gardens No. 1 Sub-

division, to a point, being the southwesterly corner of Lot 74 and in the northerly right-of-way line of Kolb Road;

THENCE westerly along the northerly right-of-way line of Kolb Road and the southerly line of Lots 75 and 76 of South Houston Gardens No. 1 Subdivision, to the center line of Berry Bayou;

THENCE in a northwesterly direction along the center line of Berry Bayou, to the point of intersection with the northerly right-of-way line of Allen Street and Allen Street extended;

THENCE in a westerly direction along the northerly right-of-way line of Allen Street, to the point of intersection with the westerly right-of-way line of Canniff Street, said point being the northwesterly corner of the City of South Houston;

THENCE southerly along the westerly line of Canniff Street and the westerly line of the City of South Houston, to the southwesterly corner of the City of South Houston, said point being in the southerly line of Genoa Avenue;

THENCE easterly along the southerly line of Genoa Avenue and Genoa Avenue extended, to the point of intersection with the southwesterly right-of-way line of the Allen-Genoa Road;

THENCE across the Allen-Genoa Road, to the point of intersection of the southerly line of the H. T. & B. R. R. Survey Abstract No. 394 with the northeasterly right-of-way line of the Allen-Genoa Road;

THENCE easterly along the southerly line of the H. T. & B. R. R. Survey Abstract No. 394, to the southeasterly corner of Alta Vista Acres No. 3, also being the northeasterly corner of Highland Acres or H. T. & B. R. R. Survey Abstract No. 389;

THENCE northerly along the easterly line of the H. T. & B. R. R. Survey Abstract No. 394, to the southwesterly

corner of the Day Land and Cattle Company Survey Abstract No. 1025;

THENCE easterly along the southerly line of the Day Land and Cattle Company Survey Abstract No. 1025, to the easterly line of Preston Road extended;

THENCE northerly along the easterly line of Preston Road extended and Preston Road, to a point 400 feet northerly of Spencer Highway;

THENCE in an easterly direction parallel with and 400 feet from the northerly right-of-way line of Spencer Highway, to a point 400 feet west of the west line of Underwood Road;

THENCE northerly along a line 400 feet west of and parallel with the west line of Underwood Road, to a point 100 feet north of the north line of La Porte Outlot No. 491;

THENCE easterly along a line 100 feet northerly from and parallel to the north lines of La Porte Outlots Nos. 491, 490, 489, 488, 487, 486, 485, 484, 483, 482 and 481, to the west line of the Lomax School Road;

THENCE southerly along the west line of the Lomax School Road, to the northeast corner of La Porte Outlot No. 481;

THENCE westerly along the north lines of La Porte Outlots Nos. 481, 482, 483, 484, 485, 486, 487, 488, 489 and 490 and along a continuation of said lines across Underwood Road, to a point in the west line of Underwood Road;

THENCE southerly along the west line of Underwood Road, to the northerly right-of-way line of Spencer Highway;

THENCE westerly along the northerly right-of-way line of Spencer Highway to the westerly line of Lily Street in Golden Acres Annex;

THENCE southerly along the westerly line of said Lily Street and Lily Street extended, to the north line of South Houston Gardens No. 4;

THENCE westerly along the northerly line of South Houston Gardens No. 4, to the northwesterly corner of South Houston Gardens No. 4;

THENCE southerly along the westerly line of South Houston Gardens No. 4, to the south line of John M. Swisher Survey;

THENCE due west, to a point in a line which is the east line of Lots 41 to 47, inclusive, of South Houston Gardens No. 2;

THENCE southerly along the easterly line of Lots 41 to 47, inclusive, of South Houston Gardens No. 2, to the southeast corner of said Lot 47;

THENCE westerly along the south line of Lots 47, 34, 33, 20, 19, 6 and 5 of South Houston Gardens No. 2, to the southwesterly corner of said Lot 5;

THENCE southerly along an extension southerly of the west line of Lot 5 of said South Houston Gardens No. 2, to a point where the north line of Snodden Avenue in Highland Acres extended easterly would intersect said line;

THENCE westerly along the northerly line of said Snodden Avenue extended and said Snodden Avenue to the northeasterly right-of-way line of Allen-Genoa Road;

THENCE northwesterly along the northeasterly line of the Allen-Genoa Road, to a point 400 feet southerly from and measured at right angles to the southerly line of Alta Vista Acres (Addition) No. 3;

THENCE westerly along a line 400 feet from and parallel to the southerly line of the said Alta Vista Acres No. 3 and continuing along said line 400 feet from and parallel to the southerly line of South Houston, to the westerly line of the Shaver Road;

THENCE southerly and southwesterly along the westerly line of Shaver Road, to the southwesterly line of Galveston Road (and being the road for many years existing and known as such and running immediately alongside the G. H. & H. R. R. and not to be confused with the present U. S. Highway No. 75 generally known as the Gulf Freeway);

THENCE southeasterly along the southwesterly line of the said old Galveston Road, to the northerly line of Avenue "O" in the Townsite of Genoa;

THENCE westerly along the northerly line of the said Avenue "O" extended, to the northeasterly line of the Gulf Freeway;

THENCE westerly (crossing the said Gulf Freeway), to the point of intersection of the southwesterly line of the Gulf Freeway and the northerly line of the Watts Road;

THENCE westerly and thereafter southwesterly along the northerly and northwesterly line of the said Watts Road to a point in the northeasterly line of Water Control and Improvement District No. 53;

THENCE S. 45° E., along the northeasterly line or boundary of Water Control and Improvement District No. 53, to the mosteasterly northeast corner of said District;

THENCE S. 45° W., along a boundary of said District 1981.25 feet, to an easterly corner of said District;

THENCE S. 45° E., along a boundary of said District 1375.55 feet to a corner of said District;

THENCE S. 45° W., along a boundary of said District 1961.25 feet, to the most southerly corner of said District;

THENCE N. 45° W., along a boundary of said District 1375.55 feet, to a corner of said District;

THENCE N. 45° E., along a boundary of said District 1307.5 feet, to a corner of said District;

THENCE N. 45° W., along a boundary of said District, to a point in the northwesterly line of the said Watts Road;

THENCE southwesterly along the northwesterly line of the said Watts Road, to a point where said road makes an abrupt turn toward the southeast;

THENCE southeasterly along the southwesterly line of the said Watts Road, to the point where said road again makes a turn toward the southwest;

THENCE southwesterly along the northwesterly line of the said Watts Road and along said line extended to Clear Creek, to the center line of Clear Creek;

THENCE westerly along the meanders of and with the center line of Clear Creek, to the easterly line of Chocolate Bayou Road;

THENCE northerly along the easterly line of Chocolate Bayou Road, to the northerly line of Fuqua Street;

THENCE westerly along the northerly line of Fuqua Street, to the westerly line of Furman Street;

THENCE southerly along the westerly line of Furman Street, to the northerly line of Fellows Road;

THENCE westerly along the northerly line of Fellows Road and its extension westerly, to the westerly line of the International-Great Northern (Missouri Pacific) Railroad, said point being also in the east line of State Highway No. 288;

THENCE northerly along the east line of State Highway No. 288, to the northerly line of Anderson Road;

THENCE westerly along the northerly line of Anderson Road, to the westerly line of South Post Oak Road;

THENCE southerly along the westerly line of South Post Oak Road to a point in the boundary line between Harris County and Fort Bend County;

THENCE northwesterly along the boundary line between Harris County and Fort Bend County, to a point where the easterly line of Fondren Road, if extended southerly, would intersect such boundary line between Harris County and Fort Bend County;

THENCE northerly along the easterly line of the said Fondren Road if so extended and along the easterly line of the said Fondren Road, to the center line of Brays Bayou;

THENCE westerly along the center line of Brays Bayou, to the northwesterly line of Richmond Road;

THENCE southwesterly and westerly along the northerly line of Richmond Road, to a point where the most westerly line of Braeburn Glen Addition (Section One), if extended southerly would intersect the northerly line of Richmond Road;

THENCE North 0° 14′ W., and passing along and upon the westerly lines of Blocks Nos. 1 and 4 of said Braeburn Glen Addition (Section One), to the center line of Brays Bayou;

THENCE northwesterly along the center line of Brays Bayou, to the easterly line of the W. J. Neal Survey;

THENCE northerly along the easterly line of the W. J. Neal Survey, to the northeasterly corner of the W. J. Neal Survey;

THENCE westerly along the northerly line of the W. J. Neal Survey, to the southeasterly corner of the David Hanson Survey;

THENCE northerly along the easterly line of the David Hanson Survey, to the northeasterly corner of the David Hanson Survey, said point being also the southwesterly corner of the Caleb McKinzie Survey;

THENCE easterly along the southerly line of the Caleb McKinzie Survey, to the southeasterly corner of said Survey;

THENCE northerly along the easterly line of the Caleb McKinzie Survey, the easterly line of the C. Ennis Survey, and the easterly line of the George L. Bellows Survey, to the northerly line of Westheimer Road;

THENCE westerly along the northerly line of Westheimer Road to the POINT OF BEGINNING.

SECTION 2: All of the area which is not now within the limits of the City of Houston, but which is comprised within the boundaries or limits hereinabove set forth is hereby annexed to and made a part of the City of Houston, save and except: — (a) such thereof as is now within the limits of any City, Town, or Village other than the City of Houston (whether such other City, Town, or Village be a Home Rule City or exists pursuant to incorporation under any general or special law of the State of Texas), and (b) the following described tract of land which includes the Bunker Hill Elementary School and grounds and described as follows, to-wit:

BEGINNING at the southwest corner of the Isaac Bunker Survey;

THENCE west (along a continuation westerly of the north line of Bunker Hill Village) 100 feet, to a point for corner;

THENCE N. 0° 19′ E. 977.4 feet, to a point for a corner;

THENCE E. 847.79 feet, to a point for a corner;

THENCE south 0° 12′ west, 977.39 feet more or less, to a point for a corner in the north line of Bunker Hill Village, said point being about in the center line of Taylorcrest Road or Street;

THENCE west along the north line of Bunker Hill Village 749 feet more or less, to the PLACE OF BEGINNING; and

(c) the area which comprises Harris County Fresh Water Supply District No. 43; and the area described in the foregoing exceptions (a), (b) and (c) are not hereby annexed to the City of Houston.

SECTION 3: That the boundaries and limits of the City of Houston are also hereby extended so as to embrace and include the following described areas of land, and the following described areas of land are hereby also annexed and made a part of the City of Houston, to-wit, — being several parcels and strips of land and areas which together comprise and include (a) the City's San Jacinto Reservoir known as Lake Houston and the islands therein, but excluding from the lake area hereby annexed the portion thereof which extends over along Spring Creek and the portion thereof which extends beyond the boundary between Harris County and Montgomery County, (b) the lands on which there rests the City's San Jacinto River Dam and appurtenant structures and lands immediately adjacent thereto, and (c) the City's new West Water Canal and the right-of-way therefor; and (in parcels for convenience) described as follows:

FIRST PARCELS: Being the City's West Canal, including and together with the land occupied by any and all water pipe lines by which the water flowing through such Canal is carried across or underneath streams, roads, or railroads, or is otherwise carried through water pipe lines, together with all of the right-of-way for or occupied by such canal including such water pipe lines, and being a strip of land extending from the point in the City's present east City Limit Line where the City's new West Canals and its right-of-way crosses such present east City Limit Line (said point being a short distance north of Industrial Road, and just

east of Federal Road) and extending in a generally northerly direction to the point where such West Canal and its right-of-way crosses the south boundary line of the land hereinafter referred to as "Second Parcel," said strip of land including in every instance the lands actually occupied by the City's new West Canal, including the water pipe lines here just referred to but extending outwardly in every instance to the outer limit of the boundary of the City's right-of-way for such Canal and water pipe lines, and including in any event all of the following several tracts or parcels of land (and in the following references to various parcels of land as being parcels designated by the letter "W" followed by a numeral, the reference is to the parcel of land so referred to by such letter and numeral in that certain deed from the UNITED STATES OF AMERICA - FEDERAL WORKS AGENCY to the City of Houston dated September 25, 1945, and recorded in Volume 1559 beginning at Page 1 of the Deed Records of Harris County, Texas, as such several parcels are shown and described on those several exhibits which are attached to and made a part of said deed and recorded with said deed), to-wit: (Beginning at the upper or northerly end of the strip of land constituting this FIRST PARCEL): — Parcel W-3; that certain parcel of land conveyed to the City by Alexander Deussen and R. B. Wallace by deed dated August 21, 1952, recorded in Volume 2493 at Page 132 of the Harris County Deed Records; that certain parcel of land conveyed to the City by Louise A. Swilley et al by deed dated July 19, 1952, recorded in Volume 2473 at Page 271 of the Harris County Deed Records; Parcel W-5; Parcel W-6; Parcel W-7; Parcel W-8; Parcel W-8A; that certain strip or parcel of land which was reserved as right-of-way for canal purposes in the deed from the City of Houston to the State of Texas for the use of the State Game and Fish Commission dated May 28, 1952, and

recorded in Volume 2484 at Page 474 of the Harris County Deed Records; that certain parcel of land conveyed to the City by C. G. Daugherty by deed dated December 8, 1953, recorded in Volume 2700 at Page 537 of the Harris County Deed Records; that certain tract of land conveyed to the City by Mrs. Lillian V. Martin by deed dated September 8, 1953, recorded in Volume 2659 at Page 115 of the Harris County Deed Records; a tract of land described as follows, to-wit: — beginning at the most southerly or southwesterly corner of the above referred to Lillian V. Martin tract, thence in a southerly direction to the northwest corner of the parcel of land here next referred to as having been conveyed to the City by H. L. Downey et ux., thence easterly along the north line of the said Downey tract to its northeast corner, thence northerly to the southeast corner of the above referred to C. G. Daugherty tract, thence westerly or southwesterly along the southerly lines of the said Daugherty and Martin Tracts to the place of beginning; that certain tract of land conveyed to the City by H. L. Downey et ux. by deed dated August 7, 1952, recorded in Volume 2484 at Page 656 of the Harris County Deed Records; Parcel W-10 (except so much thereof as lies more than 80 feet west of the center line of the City's said new Canal); Parcel W-11; Parcel W-12; Parcel W-13; Parcel W-14; Parcel W-15; Parcel W-16; Parcel W-17; Parcel W-18; Parcel W-19; Parcel W-20; Parcel W-20A; Parcel W-21; Parcel W-22 (except so much thereof as lies east of the east line of the parcel of right-of-way here next referred to as having been acquired by the City from Bayou Homesites, Inc.); that certain parcel of land acquired by the City for right-of-way for said Canal from Bayou Homesites, Inc., by deed dated January 11, 1954, recorded in Volume 2732 at Page 427 of the Harris County Deed Records; a tract of land described as follows, to-wit: — beginning at the southwest

corner of the tract of land here just referred to as having been acquired by the City from Bayou Homesites, Inc., thence southerly across Greens Bayou to the northwest corner of Parcel W-25, thence easterly along the north line of said Parcel W-25 to its northeasterly corner, thence northerly crossing Greens Bayou to the most easterly southeast corner of that certain tract of land hereinabove referred to as having been acquired by the City from Bayou Homesites, Inc., thence in a generally southwesterly direction with the easterly and southerly lines of the said Bayou Homesites, Inc., tract to the place of beginning; Parcel W-25; Parcel W-26; Parcel W-27; Parcel W-28; Parcel W-29; Parcel W-30; Parcel W-31; Parcel W-32; Parcel W-33; Parcel W-35; Parcel W-36; Parcel W-37; Parcel W-38; Parcel W-39; Parcel W-40; Parcel W-40A; Parcel W-41; Parcel W-42; Parcel W-43; Parcel W-44; Parcel W-45; Parcel W-46; Parcel W-47; Parcel W-48; Parcel W-49; Parcel W-50; Parcel W-51, to wit, — so much thereof as lies east of the City's present Limit Line.

Second Parcels: Being land on which there rest the City's San Jacinto River Dam, pump house and other appurtenant structures, and lands immediately adjacent thereto, to-wit, — the following several tracts or parcels of land, namely, — (A) that certain tract of land conveyed to the City of Houston by East Texas Oil Company by deed dated October 9, 1945, recorded in Volume 1394 at Page 533 of the Harris County Deed Records; (B) that certain tract of land conveyed to the City of Houston by Joseph Hornberger, Joseph Hornberger, Jr., and Robert E. Hornberger by deed dated May 18, 1946, recorded in Volume 1458 at Page 1 of the Harris County Deed Records; and (C) all of the bed and banks of the San Jacinto River which lie between the lands described in the two deeds here just referred to.

THIRD PARCEL: (Being the City's San Jacinto Reservoir now known as Lake Houston, except the portions thereof extending over along Spring Creek and the portion thereof extending up into Montgomery County, but including and together with all islands in said lake), to-wit: all thereof (including the portion thereof immediately above the dam which is included within the description of "Second Parcel" above), to-wit -- being all of the lands above the City's San Jacinto River Dam which are inundated or covered with water at those times when the reservoir above the dam is completely filled with water and the water is flowing over the spillway of the dam to a depth of six inches above the top of the spillway; together with all islands which are in said reservoir or lake (but excluding from the lake area so described and hereby annexed the portion thereof which extends over along Spring Creek, and the portion thereof which extends beyond the boundary between Harris County and Montgomery County).

SECTION 4: Provided further nevertheless that if there is included within the general description provided in Sections 1 and 2 of this ordinance to be hereby annexed to the City of Houston any lands or area which it is not within the jurisdiction of the City of Houston to annex, the same is hereby excluded and excepted from the area to be hereby annexed as fully as if it had been hereinabove expressly described and excepted from such area.

SECTION 5: Provided, that nothing herein or by reason hereof is to be construed to in any wise affect, curtail or abandon the jurisdiction of the City of Houston over any territory not included herein, which was acquired and obtained by virtue of that certain ordinance passed by the City Council of said City on the 18th day of April, 1913, entitled: —

"AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF HOUSTON EASTWARDLY IN A GENERAL DIRECTION WITH BUFFALO BAYOU AND THE HOUSTON SHIP CHANNEL, SO AS TO INCLUDE IN SAID CITY THE SAID NAVIGABLE STREAM AND THE LAND LYING ON BOTH SIDES THEREOF FOR A DISTANCE OF TWENTY-FIVE HUNDRED (2500) FEET FROM THE THREAD OF THE STREAM, TO A DISTANCE OF TWENTY (20) MILES IN AN AIR LINE FROM THE PRESENT EASTERLY BOUNDARY OF SAID CITY AS ESTABLISHED BY THE CITY CHARTER GRANTED BY THE LEGISLATURE OF THE STATE OF TEXAS IN THE YEAR 1905; AND ALSO EXTENDING THE WESTERN LIMITS OF SAID CITY WESTWARDLY IN A GENERAL DIRECTION WITH SAID BUFFALO BAYOU, SO AS TO INCLUDE SAID STREAM AND THE LAND LYING ON BOTH SIDES THEREOF FOR A DISTANCE OF TWENTY-FIVE HUNDRED (2500) FEET FROM THE THREAD OF SAID STREAM TO THE DIVIDING LINE BETWEEN THE ROBERT VINCE SURVEY AND THE CHARLES SAGE AND ALEX EWING SURVEYS, AND DECLARING AN EMERGENCY."

But said ordinance, except to such extent if any, as the same may be amended hereby, is to remain in full force and effect and the said City of Houston is to have and exercise all the rights, powers, authority and privileges in said territory given by law and acquired by reason of the passage of said ordinance.

SECTION 6: Should any section or part of this ordinance be held unconstitutional illegal or invalid, such unconstitutionality, illegality or invalidity of such section or part shall in no wise affect, impair or invalidate the remaining portions thereof but as to such remaining portions the same shall

be and remain in full force and effect; and should this ordinance for any reason be ineffective as to any part of the area hereby annexed to the City of Houston or as to any part of the area hereby declared and ordained to be within the city limits of the City of Houston, such ineffectiveness of this ordinance as to any such part or parts of any such area shall not affect the effectiveness of this ordinance as to all of the remainder of such area and Council hereby declares it to be its purpose to annex to the City of Houston every part of the area described in Section 1 of this ordinance (subject, however, to the exception stated in Section 2 hereof) and every part of the area described in Section 3 of this ordinance, regardless of whether any other particular part or parts of the land so described in Section 1 or in Section 3 hereof is or are effectively annexed to the City of Houston.

SECTION 7: That from and after the passage of this ordinance, the inhabitants of the territory hereby annexed shall be entitled to all the rights and privileges of other citizens of the City of Houston and shall be bound by the acts, ordinances, resolutions and regulations of the said City of Houston.

SECTION 8: The City Secretary is hereby authorized to publish this ordinance one time in some daily newspaper published in the City of Houston, Texas, and this ordinance shall not finally be passed until at least thirty days have elapsed after such publication.

Passed first reading the 31st day of October, 1956.

Passed second reading as amended the 21st day of November, 1956.

Passed third reading as further amended this 28th day of November, 1956.

Passed fourth and final reading this 31st day of December, 1956.

Passed this 31st day of December, 1956.

Approved this 31st day of December, 1956.

/s/ O. F. Holcombe
Mayor of the City of Houston

• • •

## EXHIBIT "B"

### AFFIDAVIT OF PUBLICATION

State of Texas }
County of Harris }

Before Me, the undersigned authority, a Notary Public in and for the County of Harris, and the State of Texas, on this day personally appeared: J. L. Du Ross, who after being duly sworn, says that he is the Classified Adv. Manager of The Houston Chronicle, a daily newspaper published in said County and State, and that the publication, of which the annexed is a true copy, was published to-wit: November 29, 1956.

J. L. Du Ross

Sworn and Subscribed to before me, this the 16th day of January, 1957 A.D.

Helen Rush
Notary Public in and for the
County of Harris,
State of Texas

(CLERK'S EXPLANATORY NOTE—Attached to the foregoing affidavit of J. L. DuRoss is a copy of the same Ordinance No. 3351 which appears as Defendants' Exhibit "A" to Defendants' Motion for Summary Judgment, except that the words "Passed fourth and final reading" appearing in Exhibit "A" are changed to read "Passed fourth reading" in the published ordinance which is part of Exhibit "B". By direction, the copy which is attached to the foregoing DuRoss affidavit is omitted from this Transcript to prevent duplication.)

Pursuant to direction therein contained, the within and foregoing ordinance of the City Council of the City of Houston, which was passed on first reading on the 31st day of October, 1956, and was passed on second reading as amended on the 21st day of November, 1956, (and as so passed and so amended was published in the Houston Chronicle, to-wit: on November 23, 1956) and was passed on third reading as further amended on the 28th day of November, 1956, is hereby ordered by me to be published one time in the Houston Chronicle.

Witness my hand this 28th day of November, 1956.

M. H. WESTERMAN
City Secretary of the City of Houston

• • • • •

## EXHIBIT "C"

**Minutes of An Adjourned Regular Meeting of The City Council of The City of Houston, Texas Held at 9:30 A.M., December 31, 1956.**

"Council Chamber, City Hall, Monday, December 31, 1956.

"An adjourned regular meeting of the City Council was held at 9:30 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette, and Mr. George D. Neal, City Attorney, and Mr. F. F. Beadle, First Assistant City Attorney, present.

"Motion #7266 Rules Governing Procedure of City Council Be and Remain Suspended and Ord. #3351 Be Called For Further Reading"

"MOTION by Councilman Brakefield that the rules governing the procedure of the City Council be and remain suspended and that Ordinance No. 3351, passed on its first reading on October 31, 1956, and passed on its second reading as amended on November 21, 1956, and passed on its third reading as further amended on November 28, 1956, be called up for further reading and consideration for final passage. Seconded by Councilman McLemore and carried. ADOPTED Vote: Mayor Holcombe, Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none.

"Ordinance #3351 Extending the City Limits of The City of Houston Fourth and Final Reading"

"An ordinance entitled: 'An ordinance extending the City Limits of the City of Houston to include all lands and area within certain limits and boundaries with certain exceptions, and annexing to the City of Houston all of the area within said limits and boundaries with certain exceptions; further extending the City Limits of the City of Houston by adding certain other additional territory thereto, to-wit: the area or areas comprising (A) the City's San Jacinto Reservoir (known as Lake Houston), (B) the City's San Jacinto River Dam and Appurtenant Lands; and (C) The City's New West Water Canal and the Right-Of-Way

therefor; providing that such ordinance shall not affect the jurisdiction of the City of Houston over certain territory which was acquired by virtue of an ordinance passed April 18, 1913; providing a saving clause; and providing that the inhabitants of the territory hereby annexed shall be entitled to the rights and privileges of other citizens of the City of Houston and shall be bound by the acts, ordinances, etc., of said City', was submitted, placed on its fourth and final reading in full and passed by the following roll call vote: Mayor Holcombe aye, Councilman Kesseler aye, Councilman Resweber aye, Councilman McLemore aye, Councilman Wilson aye, Councilman Brakefield aye, Councilman Welch aye, Councilman Reeves no, and Councilman Marquette aye. ADOPTED

"Gentleman Repres. Hill & Hill Truck Lines Wanted to Protest Annexation Ordinance"

"After passage of the ordinance a Gentleman came forward and requested permission to speak before Council, stating he understood the public would be heard. Mayor Holcombe advised the gentleman that the hearing had already been held and that the public would not be heard on it again. The gentleman then stated, for the record, that he represented Hill and Hill Truck Lines and would have made protest if given opportunity, he further stated that Councilman Kesseler told him that he would be given an opportunity to speak. Councilman Kesseler then stated that he advised the man that he did not know what the procedure would be, but if time was given to the public he would be given the opportunity to speak.

"Council Adjourned"

"MOTION by Councilman Kesseler, seconded by Councilman Resweber that Council be adjourned to 9:00 a.m., Wednesday, January 2, 1957.

COUNCIL ADJOURNED"

• • • • •

FILED January 17, 1957

Filed Feb. 8, 1957

## PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

*To the Honorable Judge of Said Court:*

I

Now come the Plaintiffs in the First Cause of Action in the above styled and numbered cause, moving this Honorable Court under Rule 166-A of the Texas Rules of Civil Procedure for a Summary Judgment in their favor and would respectfully show this Honorable Court as follows:

Ordinance No. 3351 supposedly adopted by the City Council of the City of Houston on December 31, 1956, is wholly void, invalid and unconstitutional as shown beyond any question of genuine issue of material fact by the pleadings, the deposition, the exhibits, the admissions and the affidavits on file herein, because:

1. Section 2b, Article I of the Charter of the City of Houston (authorizing annexation of territory by ordinance) was repealed by Article 1265 R.S. 1925, and the Charter contains no other authorization for annexation of territory by an unpetitioned ordinance.

2. The Ordinance Committee of the Council of the City of Houston did not hold a meeting prior to introduction of the ordinance and did not at any time give notice of the time and place it would consider the ordinance or afford an opportunity to citizens to be heard at a public meeting of the Committee, all in violation of Section 2b, Article I and Section 3, Article VII of the Charter.

3. The subject of the ordinance is not clearly expressed in the title as required by Section 3 (4th grammatical paragraph), Article VII of the Charter, and the title is misleading in that the title only enumerates certain specified areas

being annexed and the body of the ordinance describes such enumerated areas and in addition thereto describes by metes and bounds and annexes a large area not referred to in the caption.

4. The provisions of Section 2 of the ordinance (that all of the area described in Section 1 which is not *now* (date of final passage) within the City of Houston and not *now* within the limits of any other city, town, or village, is annexed) and the provision of Section 4 (that if the general description provided in Sections 1 and 2 includes any land not within the jurisdiction of the City of Houston to annex such lands are thereby excluded and excepted from the area to be annexed) rendered the description of the area to be annexed wholly uncertain while the Ordinance was pending and also insufficient to assert jurisdiction over any of the described area by the introduction and consideration of the ordinance because:

a. No citizen could read the ordinance and know what lands would be unincorporated at final passage of the ordinance, and

b. Sections 2 and 4, excluding area incorporated at final passage and applying only to areas within jurisdiction of city at final passage, expressly negative the ordinance being an assertion of jurisdiction over the described area and recognizes the right of areas therein to petition for incorporation.

5. The ordinance was not published in a daily newspaper published in the City of Houston one time after it had been amended as desired by the Council for final passage as required by Section 2b, Article I of the Charter and was finally passed without publication within less than 30 days after it had been amended as desired for final passage in violation of such Charter provision.

6. At no meeting at which the ordinance was considered by the Council were citizens afforded an opportunity to be heard on the ordinance as required by Section 3, (2nd grammatical paragraph) Article VII, and at the so-called "adjourned regular meeting" on December 31, 1956, at which the ordinance was finally passed, the Council acting through its presiding officer arbitrarily denied citizens present the right to be heard on the ordinance.

7. If the publications of the ordinance on November 23, 1956, and November 29, 1956, were each made after the ordinance published had been amended as desired by the Council for final passage and thus publications authorized by the Council, the ordinance read and approved on November 28, 1956, was not an amendment of Ordinance 3351 introduced on October 31, 1956, but was a new ordinance which was introduced and passed on first reading on November 28, published on November 29, and finally passed on December 31, without the Ordinance Committee (as required by Section 2b, Article I, and Section 3, Article VII) reporting on the ordinance, holding a public meeting on the ordinance or giving notice that the ordinance was to be considered or introduced.

8. The ordinance attempts to amend the boundaries of the City of Houston as fixed by a certain referendum ordinance adopted by the qualified voters of the City on December 30, 1949, in violation of Section 9, Article VIIb, of the charter prohibiting amendment of a referendum ordinance except by election.

9. By force of Article 1182c-1 V.A.C.S. adoption of the ordinance assumes the bonded indebtedness of numerous water districts and in violation of Section 19a, Article II of the Charter the ordinance was adopted without the Con-

troller having certified there were funds in the treasury available to pay such obligations or to be received in the treasury prior to maturity of the obligations.

WHEREFORE, Plaintiffs say that there is no genuine issue of material facts and Plaintiffs being entitled to judgment as a matter of law, they respectfully move this Honorable Court that, upon hearing and consideration of this motion, a Summary Judgment be entered with respect to the First Cause of Action set forth in the Plaintiffs' Petition granting the Plaintiffs the relief therein sought and rendering judgment in favor of the Plaintiffs and against the Defendant, and for costs and such other and further relief as the Court may deem proper.

(Signatures of Counsel)

II

Now come the Plaintiffs in the Second Cause of Action in the above styled and numbered cause, moving this Honorable Court under Rule 166-A of the Texas Rules of Civil Procedure for a Summary Judgment in their favor and would respectfully show this Honorable Court as follows:

1. The Plaintiffs adopt all of the allegations and recitals contained in the Motion for Summary Judgment with respect to the First Cause of Action as fully as if set out at length in this particular Motion.

2. The Plaintiffs say that the ordinance is void because the question of whether the bonded indebtedness of numerous Water Control and Improvement Districts and Fresh Water Supply Districts which the City claims to have annexed, should be assumed has never been submitted to an election at which only qualified citizens who have duly

rendered their property for taxation would be entitled to vote, all in violation of the constitution and laws of this State.

WHEREFORE, Plaintiffs respectfully move this Honorable Court that, upon hearing and consideration of this motion, a Summary Judgment be entered with respect to the Second Cause of Action set forth in the Plaintiffs' Petition granting the Plaintiffs the relief therein sought and rendering judgment in favor of the Plaintiffs and against the Defendants, and for costs and such other and further relief as the Court may deem proper.

(Signatures of Counsel)

FILED Feb. 8, 1957

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Filed Feb. 8, 1957

## (PLAINTIFFS')
## AFFIDAVIT OF WILL SEARS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND OPPOSING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

BEFORE ME, the undersigned authority, a Notary Public in and for the County of Harris and the State of Texas, on this day personally appeared Will Sears, who being by me duly sworn upon his oath deposes and says:

My name is Will Sears. I am a citizen of Houston, Harris County, Texas, and I am one of the attorneys for the Plaintiffs in this cause. I know of my own knowledge that the facts stated herein are true and correct and I make this affidavit on my personal knowledge.

1. Exhibit A attached hereto is a true and correct photostatic copy of the so-called proposed Ordinance 3351 pur-

portedly passed on first reading by the City Council of the City of Houston on October 31, 1956, as the same appears in the files of the City Secretary's office of the City of Houston and of record in the City Secretary's Annexation Ordinance Book No. 1 at Pages 137 to 145. This exhibit also includes a true and correct copy of the Mayor's letter of October 31, 1956, submitting the said proposed ordinance to the City Council, together with a true and correct copy of the so-called report of the Ordinance Committee of the City Council of the City of Houston under the same date, being signed by George W. Kesseler, Lee McLemore and George Marquette, Jr., each of whom was at such time and still is a duly elected, qualified and acting Councilman of the City of Houston. Other than the so-called Ordinance Committee report set out in Exhibit A, there is no record in the minutes, ordinance books or other public records of the City of Houston of any public notice given, or public meeting held or of any action of any kind whatsoever ever having been taken by the Ordinance Committee of the City Council of the City of Houston in connection with said proposed Ordinance No. 3351 at any time.

2. Exhibit B attached hereto is a true and correct photostatic copy of page No. 462 of Minute Book EEE, an extract of the minutes of the City Council of the City of Houston for the regular meeting of October 31, 1956. There is no entry in the record of any kind whatsoever in the minutes, ordinance books or other public records of the City Council of the City of Houston concerning the introduction, receiving of the report of the Ordinance Committee, or passage on first reading of proposed Ordinance No. 3351 on or prior to October 31, 1956 except as shown by said Exhibits A and B. There is no record of any motion, resolution or ordinance directing public notice to be given of the fact that the Council would consider passage

on first reading of said proposed ordinance on October 31, 1956, adopted on or prior to such date. There is no record that any such notice was attempted to be given.

3. Exhibit C attached hereto is a true and correct photostatic copy of proposed Ordinance No. 3351 as purportedly "passed second reading as amended" on November 21, 1956, by the City Council of the City of Houston as the same appears in the files of the City Secretary's office of the City of Houston and of record in the City Secretary's Annexation Ordinance Book No. 1 at Pages 145 through 152.

4. Exhibit D attached hereto are true and correct photostatic copies of pages 29-30 and 31 of Minute Book No. FFF, an extract of the minutes of the City Council of the City of Houston for the regular meeting of said Council on November 21, 1956. There is no other entry in the minutes or ordinance books or any other public record of the City Council concerning the proposed Ordinance No. 3351 as passed on second reading as amended, other than as shown by Exhibits C and D. There is no record of any motion, resolution or ordinance directing public notice to be given of the fact that the Council would consider passage of said proposed ordinance on second reading on November 21, 1956, adopted on or prior to such date. There is no public record that any such notice was attempted to be given.

5. The records, minutes of the City Council and ordinance books of the City of Houston do not contain any ordinance, resolution or motion of the City Council of the City of Houston on or prior to November 23, 1956, declaring that the City Council had amended said proposed Ordinance No. 3351 as desired by the Council for final passage or ordering the said proposed Ordinance No. 3351 as amended, published in some daily newspaper or both so declaring and so ordering.

6. The Houston Chronicle, a daily newspaper published in the City of Houston, published a copy of said proposed Ordinance No. 3351 on second reading as amended in its issue of November 23, 1956. The publication of November 23, 1956, concludes as follows:

> "Pursuant to direction therein contained the within and foregoing ordinance of the City Council of the City of Houston which was passed on first reading on the 31st day of October, 1956 and was passed on second reading as amended on the 21st day of November, 1956, is hereby ordered by me to be published one time in The Houston Chronicle.
>
> "Witness my hand this 21st day of November, 1956.
>
> M. H. WESTERMAN
> City Secretary of the City of Houston"

7. Exhibit E attached hereto is a true and correct photostatic copy of the proposed ordinance which was purportedly passed by the City Council of the City of Houston on November 28, 1956, and which has been styled by the City of Houston as "Ordinance 3351" and which bears the notation "passed third reading as further amended this 28th day of November, 1956" as the same appears of record on file in the City Secretary's office of the City of Houston and in Annexation Ordinance Book No. 1 at Pages 153 through 160.

8. Exhibit F attached hereto is a true and correct photostatic copy of Pages 51, 52 and 53 of Minute Book No. FFF, an extract of the minutes of the City Council of the City of Houston for the regular meeting of said Council on November 28, 1956. There is no other entry in the minutes or ordinance books or any other public records of the City Council concerning the proposed ordinance called "Ordinance 3351" as "passed on third reading as further amend-

ed" other than as shown by Exhibits E and F. There is no record of any motion, resolution or ordinance directing public notice to be given that the Council would consider passage of said proposed ordinance on "third reading" on November 28, 1956, adopted on or prior to such date. There is no public record that any such notice was attempted to be given.

9. The records, minutes and ordinance books of the City of Houston do not contain any ordinance, resolution or motion of the City Council of the City of Houston on or prior to November 29, 1956, declaring that the City Council had amended said proposed "Ordinance No. 3351" as desired for final passage or ordering the said proposed Ordinance No. 3351 "as further amended" published in some daily newspaper or both so declaring and so ordering.

10. The said Houston Chronicle published a supposed copy of said proposed Ordinance No. 3351 as "passed third reading as further amended" in its issue of November 29, 1956. Although the body of the proposed ordinance as published is the same as the body of the proposed ordinance as it appears in Exhibit E attached hereto "on third reading", and is not the body of the proposed ordinance as passed on first reading, this published notice commences with the Mayor's letter of submission and the Ordinance Committee Report of October 31, 1956 as set out in Exhibit A. There is no Ordinance Committee report attached to the proposed ordinance as "passed third reading as further amended" on November 28, 1956, nor is there any other record of an Ordinance Committee report on the "third reading" of the proposed ordinance. As shown by Exhibit E, the proposed ordinance contains a line with a blank reading "Passed fourth and final reading this ..... day of December, 1956". The published copy of said ordinance in the Houston Chron-

icle of November 29, 1956 shows only the words "Passed fourth reading this ..... day of December, 1956" instead of the correct words shown above.

The publication of November 29, 1956, concludes as follows:

> "Pursuant to direction therein contained, the within and foregoing ordinance of the City Council of the City of Houston, which was passed on first reading on the 31st day of October, 1956, and was passed on second reading as amended on the 21st day of November, 1956, (and as so passed and so amended was published in the Houston Chronicle, to-wit: on November 23, 1956) and was passed on third reading as further amended on the 28th day of November, 1956, is hereby ordered by me to be published one time in the Houston Chronicle.
>
> "Witness my hand this 28th day of November, 1956.
>
> M. H. WESTERMAN
> City Secretary of the City of Houston"

11. Exhibit G attached hereto is a true and correct copy of Motion No. 7265 purportedly passed by the City Council of the City of Houston on December 26, 1956, at its regular meeting on such date ordering that the meeting "be adjourned" to 9:30 a.m. Monday, December 31, 1956 "for the purpose of then considering, for its final passage, Ordinance No. 3351, being proposed annexation ordinance, * * * ". There is no ordinance, resolution or motion of the City Council of the City of Houston appearing in the records, minutes or ordinance books of the City of Houston prior to the time of the passage of this Motion No. 7265 (Exhibit G) either directly or indirectly ordering or stating or in anywise determining that said proposed Ordinance No. 3351 was ready for consideration for final passage or had been amended as desired for final passage.

12. Exhibit H attached hereto is a true and correct copy of the entire entries in the minute book known as Minute Book No. FFF of the City Council of the City of Houston pertaining to a so-called "adjourned regular meeting" held on December 31, 1956. In connection with these minute entries, the affiant, Will Sears, states that he was present in the City Council Chamber of the City of Houston, Texas, at 9:30 a.m. December 31, 1956, to observe the entire proceedings of the City Council of the City of Houston on that date and to be heard in protest on behalf of the Plaintiffs in this case, if the so-called Ordinance No. 3351 came on to be considered. In this connection, the affiant, Will Sears, states that the minutes for such date (Exhibit H) do not record all of the events of that meeting and do not correctly reflect the entire sequence of events. At approximately 9:33 a.m., Mayor Holcombe called the meeting to order, ordered the person acting as secretary to call the roll and the roll call proceeded. Immediately thereafter, the Mayor asked F. F. Beadle, First Assistant City Attorney, if he had a motion to present to Council. Mr. Beadle stepped forward to the person acting as City Secretary and presented a paper from which the person acting as City Secretary read aloud the draft of the motion which appears in these minutes as Motion No. 7266. Upon completion of its reading, Councilman Brakefield immediately said, "So moved". The motion was seconded, put to a voice vote and the Mayor declared that it was adopted. Immediately, the Mayor ordered the person acting as City Secretary to "read the ordinance" and she proceeded with the reading of the said proposed Ordinance No. 3351 as shown in said minutes. Upon the very instant that the person acting as City Secretary had spoken the last word of the reading of this Ordinance, the Mayor ordered "call the roll". The person acting as City Secretary immediately commenced calling the roll, beginning with

Mayor Holcombe. At no time, either at the commencement of the meeting, or prior to the moving and passage of Motion No. 7266, or subsequent to Motion No. 7266 and prior to the reading of proposed Ordinance No. 3351, or subsequent to the reading of proposed Ordinance No. 3351 and prior to the commencement to the calling of the roll, did the Mayor, the person acting as the City Secretary or any other person acting for and on behalf of the City Council announce that citizens of the City would be heard upon the matter to be considered, to-wit, the fourth reading and final passage of the said proposed Ordinance No. 3351, or in any manner give any indication that the public would be heard at that time. At no time from the time the gavel went down at the commencement of the meeting until the completion of the roll call was it possible for any person to have spoken without interrupting the proceedings which were going on before the City Council. After the Mayor ordered the roll call on the passage of the proposed ordinance to proceed, the person acting as City Secretary continued to call names of Councilmen and take votes until the last member of Council had voted. Then, prior to the announcement of the result of the vote or the rap of the gavel or any declaration by the presiding officer that the ordinance had been adopted, and prior to any attempt by the Mayor to sign the same with his approval, Mr. Thad Grundy, a citizen of the City of Houston, rose to his feet and stated that he wanted to be heard in opposition to the passage of the proposed ordinance and that he understood the public would be heard. Without requesting Mr. Grundy to step within the rail separating the Council table from the rest of the chamber and go to the microphone reserved for members of the public addressing the Council, Mayor Holcombe immediately turned to the entire audience and stated that the public would not be heard. He used words in substance and effect as follows:

"No sir, you will not be permitted to speak. We had a hearing some time back and the public will not be heard on it again today."

He repeated his ruling that the public would not be heard at least twice. Mr. Thad Grundy immediately said that he was stating for the record that he represented the Hill and Hill Truck Lines and that he wanted an opportunity to make a protest against the passage of the ordinance and would have made a protest if given opportunity and he further stated that prior to the meeting of December 31, 1956, he had a conversation with Councilman George Kesseler at which time Councilman Kesseler told him (Mr. Thad Grundy) that he would have an opportunity to speak and be heard at this meeting. Again Mayor Holcombe repeated his ruling that the public would not be heard and Councilman Kesseler spoke up stating something to the effect that he had told the gentleman (Mr. Thad Grundy) that if time was given to the public he, Mr. Grundy, would be given the opportunity to speak but that he did not know "what the procedure would be". Mr. Grundy at once stated that such was not his understanding of the advice that he had received from Mr. Kesseler. Mayor Holcombe abruptly stated "That's all of the business to come before this meeting, the meeting stands adjourned." The various members of the Council commenced leaving their seats immediately and the meeting broke up. I watched, listened and observed all of these proceedings closely. I know of my own knowledge and state as a fact that neither Mr. Grundy, Mr. Robert L. Burns, another attorney representing the Plaintiffs who was present, myself, or any other member of the public, was ever advised or given any opportunity to speak or be heard in any manner on the matters to be considered at any time during this meeting. I saw and heard the ordinance

rushed to a vote after the reading without any debate, without calling upon the public for anyone to speak and without any opportunity for anybody to be heard in any manner. I heard the presiding officer of the Council, the Mayor of the City of Houston, rule at least three times that the public would not be heard in connection with the passage of the ordinance and no member of the Council raised his voice in protest against this ruling or attempted to object to the ruling and have the Council overrule it.

13. Annexation Ordinance Book No. 1 of the City Council of the City of Houston contains a record of the purported ordinance called by the City of Houston Ordinance 3351 which was supposedly passed on fourth and final reading on said 31st day of December, 1956, the same being the same document attached hereto and previously identified as Exhibit E except that, on or following December 31, 1956, insertion of the date (December 31, 1956) of so-called final passage has been made and the Mayor's signature has been added.

14. The Daily Court Review, a newspaper or periodical published in the City of Houston, published the title of so-called Ordinance No. 3351 in its issue of January 4, 1957.

15. The Minute Books, Ordinance Books and other public records of the City of Houston do not contain any certificate or any record of any certificate by the Defendant Roy B. Oakes, as City Controller, certifying to the City Council that the money required for the making of the obligation by the City of Houston to pay the principal and interest of the issued and outstanding bonds and other obligations of the Water Control and Improvement Districts and Fresh Water Supply Districts being supposedly annexed by said alleged Ordinance No. 3351 was then in the

treasury and not appropriated for any other purpose; or any certificate filed by the said Defendant certifying to the City Council that funds would be received into the treasury and be available before the maturities of said obligations and that the funds anticipated had not already been appropriated for any other purpose.

16. On February 6, 1957, the City Council of the City of Houston adopted Ordinance No. 57-144 assuming the debts, liabilities and obligations and taking over the properties of Harris County Water Control and Improvement Districts Nos. 22, 24, 26, 39, 44, 49, 51 and 59 and of Harris County Fresh Water Supply District No. 23, a true and correct copy of such ordinance being attached hereto, marked Exhibit I.

17. On February 6, 1957, the City Council of the City of Houston adopted Ordinance No. 57-143 purporting to authorize certain unnamed Water Control and Improvement Districts and Fresh Water Supply Districts supposedly contained within the area claimed to have been annexed by the Defendant City of Houston to continue operating under regulations supposedly provided in said ordinance, admitting the intention of the City of Houston to assume the obligations of said districts and purporting to authorize the governing bodies of said districts to incur obligations for and on behalf of the City of Houston, a true and correct copy of which ordinance is attached hereto and marked Exhibit J.

The affiant Will Sears says that he has carefully inspected and read the minutes of the City Council, the ordinance books of the City of Houston and other public records of said City as shown above and that the allegations above set forth concerning the nonexistence of records are true and correct from his own personal knowledge and further

says that the copies attached hereto are true and correct copies of the public records described above and further says that, where statements of occurrences are made as to events taking place in and before the City Council within the personal view and hearing of the affiant such statements are true and correct of the affiant's own knowledge.

/s/ WILL SEARS
Will Sears

SUBSCRIBED AND SWORN to before me this 8th day of February, 1957, to certify which witness my hand and seal of office.

/s/ DOROTHY W. WILLIS
Notary Public in and for Harris
(SEAL) County, Texas

* * * * *

**EXHIBIT "A"**

#3351
BOOK NO. EEE PAGE NO. 462

MAYOR'S OFFICE
HOUSTON, TEXAS

October 31st, 1956

Honorable City Council of the City of Houston City Hall

Gentlemen:

I submit to you herewith an ordinance entitled:

"AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS, AND ANNEXING TO THE CITY OF HOUSTON ALL OF THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH

CERTAIN EXCEPTIONS; FURTHER EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON BY ADDING CERTAIN OTHER ADDITIONAL TERRITORY THERETO, TO-WIT: THE AREA OR AREAS COMPRISING (A) THE CITY'S SAN JACINTO RESERVOIR (KNOWN AS LAKE HOUSTON), (B) THE CITY'S SAN JACINTO RIVER DAM AND APPURTENANT LANDS; AND (C) THE CITY'S NEW WEST WATER CANAL AND THE RIGHT-OF-WAY THEREFOR; PROVIDING THAT SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVING CLAUSE; AND PROVIDING THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC., OF SAID CITY."

Very truly yours,

O. F. Holcombe
Mayor of the City of Houston

The undersigned, the Ordinance Committee of the City Council of the City of Houston, hereby unanimously report favorably upon the ordinance above referred to and recommend its passage.

George W. Kesseler

Lee McLemore

George Marquette, Jr.

Ordinance Committee of the City Council of the City of Houston

AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS, AND ANNEXING TO THE CITY OF HOUSTON ALL OF THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; FURTHER EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON BY ADDING CERTAIN OTHER ADDITIONAL TERRITORY THERETO, TO-WIT: THE AREA OR AREAS COMPRISING (A) THE CITY'S SAN JACINTO RESERVOIR (KNOWN AS LAKE HOUSTON), (B) THE CITY'S SAN JACINTO RIVER DAM AND APPURTENANT LANDS; AND (C) THE CITY'S NEW WEST WATER CANAL AND THE RIGHT-OF-WAY THEREFOR; PROVIDING THAT SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVING CLAUSE; AND PROVIDING THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC., OF SAID CITY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1: That the boundaries and limits of the City of Houston are hereby extended so as to embrace and include all of the lands and area lying within the following described boundaries and comprised within the following limits (save and except only such of the land lying within such boundaries and limits as is described in the exceptions set forth or stated in Section 2 of this ordinance), to-wit:

(CLERK'S EXPLANATORY NOTE — The field notes appearing here are omitted by direction. They are the same as the field notes appearing in the ordinance attached as Defendants' Exhibit A to Defendants' Motion for Summary Judgment, on Pages 39 through 61 of this Transcript, except:

(1) The eighty-ninth call in this exhibit was changed on second reading to conform to the amendment ordered by Motion No. 6984, Plaintiffs' Exhibit D, appearing in this Transcript, Page 106, and thereafter remained changed.

(2) On third and fourth reading, the 400 foot strip along Spencer Highway was not extended to the City limits of LaPorte but the strip was carried northerly from Spencer Highway along the west side of Underwood Road and then easterly along the north side of Water Control and Improvement District No. 56 to the west line of the Town of Lomax, all in accordance with the amendment ordered by Motion No. 7042, Plaintiffs' Exhibit F, this Transcript, Page 115.)

SECTION 2: All of the area which is not now within the limits of the City of Houston, but which is comprised within the boundaries or limits hereinabove set forth is hereby annexed to and made a part of the City of Houston, save and except such thereof as is now within the limits of any City, Town, or Village other than the City of Houston (whether such other City, Town, or Village be a Home Rule City or exists pursuant to incorporation under any general or special law of the State of Texas).

SECTION 3: That the boundaries and limits of the City of Houston are also hereby extended so as to embrace and include the following described areas of land, and the following described areas of land are hereby also annexed and made a part of the City of Houston, to-wit, — being several

parcels and strips of land and areas which together comprise and include (a) the City's San Jacinto Reservoir known as Lake Houston and the islands therein, but excluding from the lake area hereby annexed the portion thereof which extends over along Spring Creek and the portion thereof which extends beyond the boundary between Harris County and Montgomery County, (b) the lands on which there rests the City's San Jacinto River Dam and appurtenant structures and lands immediately adjacent thereto, and (c) the City's new West Water Canal and the right-of-way therefor; and (in parcels for convenience) described as follows:

First Parcel: Being the City's West Canal, including and together with the land occupied by any and all water pipe lines by which the water flowing through such Canal is carried across or underneath streams, roads, or railroads, or is otherwise carried through water pipe lines, together with all of the right-of-way for or occupied by such canal including such water pipe lines, and being a strip of land extending from the point in the City's present east City Limit Line where the City's new West Canals and its right-of-way crosses such present east City Limit Line (said point being a short distance north of Industrial Road, and just east of Federal Road) and extending in a generally northerly direction to the point where such West Canal and its right-of-way crosses the south boundary line of the land hereinafter referred to as "Second Parcel," said strip of land including in every instance the lands actually occupied by the City's new West Canal, including the water pipe lines here just referred to but extending outwardly in every instance to the outer limit of the boundary of the City's right-of-way for such Canal and water pipe lines, and including in any event all of the following several

tracts or parcels of land (and in the following references to various parcels of land as being parcels designated by the letter "W" followed by a numeral, the reference is to the parcel of land so referred to by such letter and numeral in that certain deed from the UNITED STATES OF AMERICA — FEDERAL WORKS AGENCY to the City of Houston dated September 25, 1945, and recorded in Volume 1559 beginning at Page 1 of the Deed Records of Harris County, Texas, as such several parcels are shown and described on those several exhibits which are attached to and made a part of said deed and recorded with said deed), to-wit: — (Beginning at the upper or northerly end of the strip of land constituting this FIRST PARCEL): — Parcel W-3; that certain parcel of land conveyed to the City by Alexander Deussen and R. B. Wallace by deed dated August 21, 1952, recorded in Volume 2493 at Page 132 of the Harris County Deed Records; that certain parcel of land conveyed to the City by Louise A. Swilley et al. by deed dated July 19, 1952, recorded in Volume 2473 at Page 271 of the Harris County Deed Records; Parcel W-5; Parcel W-6; Parcel W-7; Parcel W-8; Parcel W-8A; that certain strip or parcel of land which was reserved as right-of-way for canal purposes in the deed from the City of Houston to the State of Texas for the use of the State Game and Fish Commission dated May 28, 1952, and recorded in Volume 2484 at Page 474 of the Harris County Deed Records; that certain parcel of land conveyed to the City by C. G. Daugherty by deed dated December 8, 1953, recorded in Volume 2700 at Page 537 of the Harris County Deed Records; that certain tract of land conveyed to the City by Mrs. Lillian V. Martin by deed dated September 8, 1953, recorded in Volume 2659 at Page 115 of the Harris County Deed Records; a tract of land described as follows, to-wit: — beginning at the most southerly or southwesterly corner of the above re-

ferred to Lillian V. Martin tract, thence in a southerly direction to the northwest corner of the parcel of land here next referred to as having been conveyed to the City by H. L. Downey et ux., thence easterly along the north line of the said Downey tract to its northeast corner, thence northerly to the southeast corner of the above referred to C. G. Daugherty tract, thence westerly or southwesterly along the southerly lines of the said Daugherty and Martin Tracts to the place of beginning; that certain tract of land conveyed to the City by H. L. Downey et ux. by deed dated August 7, 1952, recorded in Volume 2484 at Page 656 of the Harris County Deed Records; Parcel W-10 (except so much thereof as lies more than 80 feet west of the center line of the City's said new Canal); Parcel W-11; Parcel W-12; Parcel W-13; Parcel W-14; Parcel W-15; Parcel W-16; Parcel W-17; Parcel W-18; Parcel W-19; Parcel W-20; Parcel W-20A; Parcel W-21; Parcel W-22 (except so much thereof as lies east of the east line of the parcel of right-of-way here next referred to as having been acquired by the City from Bayou Homesites, Inc.); that certain parcel of land acquired by the City for right-of-way for said Canal from Bayou Homesites, Inc., by deed dated January 11, 1954, recorded in Volume 2732 at Page 427 of the Harris County Deed Records; a tract of land described as follows, to-wit: — beginning at the southwest corner of the tract of land here just referred to as having been acquired by the City from Bayou Homesites, Inc., thence southerly across Greens Bayou to the northwest corner of Parcel W-25, thence easterly along the north line of said parcel W-25 to its northeasterly corner, thence northerly crossing Greens Bayou to the most easterly southeast corner of that certain tract of land hereinabove referred to as having been acquired by the City from Bayou Homesites, Inc., thence in a generally southwesterly direction with the easterly and

southerly lines of the said Bayou Homesites, Inc., tract to the place of beginning; Parcel W-25; Parcel W-26; Parcel W-27; Parcel W-28; Parcel W-29; Parcel W-30; Parcel W-31; Parcel W-32; Parcel W-33; Parcel W-35; Parcel W-36; Parcel W-37; Parcel W-38; Parcel W-39; Parcel W-40; Parcel W-40A; Parcel W-41; Parcel W-42; Parcel W-43; Parcel W-44; Parcel W-45; Parcel W-46; Parcel W-47; Parcel W-48, Parcel W-49; Parcel W-50; Parcel W-51; to-wit, — so much thereof as lies east of the City's present City Limit Line.

SECOND PARCEL: Being land on which there rest the City's San Jacinto River Dam, pump house and other appurtenant structures, and lands immediately adjacent thereto, to-wit, — the following several tracts or parcels of land, namely, — (A) that certain tract of land conveyed to the City of Houston by East Texas Oil Company by deed dated October 9, 1945, recorded in Volume 1394 at Page 533 of the Harris County Deed Records; (B) that certain tract of land conveyed to the City of Houston by Joseph Hornberger, Joseph Hornberger, Jr., and Robert E. Hornberger by deed dated May 18, 1946, recorded in Volume 1458 at Page 1 of the Harris County Deed Records; and (C) all of the bed and banks of the San Jacinto River which lie bebetween the lands described in the two deeds here just referred to.

THIRD PARCEL: (Being the City's San Jacinto Reservoir now known as Lake Houston, except the portions thereof extending over along Spring Creek and the portion thereof extending up into Montgomery County, but including and together with all islands in said lake), to-wit: all thereof (including the portion thereof immediately above the dam which is included within the description of "Second Parcel" above), to-wit, — being all of the lands above the City's San

Jacinto River Dam which are inundated or covered with water at those times when the reservoir above the dam is completely filled with water and the water is flowing over the spillway of the dam to a depth of six inches above the top of the spillway; together with all islands which are in said reservoir or lake (but excluding from the lake area so described and hereby annexed the portion thereof which extends over along Spring Creek, and the portion thereof which extends beyond the boundary between Harris County and Montgomery County).

SECTION 4: Provided further nevertheless that if there is included within the general description provided in Sections 1 and 2 of this ordinance to be hereby annexed to the City of Houston any lands or area which it is not within the jurisdiction of the City of Houston to annex, the same is hereby excluded and excepted from the area to be hereby annexed as fully as if it had been hereinabove expressly described and excepted from such area.

SECTION 5: Provided, that nothing herein or by reason hereof is to be construed to in any wise affect, curtail or abandon the jurisdiction of the City of Houston over any territory not included herein, which was acquired and obtained by virtue of that certain ordinance passed by the City Council of said City on the 18th day of April, 1913, entitled:—

"AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF HOUSTON EASTWARDLY IN A GENERAL DIRECTION WITH BUFFALO BAYOU AND THE HOUSTON SHIP CHANNEL, SO AS TO INCLUDE IN SAID CITY THE SAID NAVIGABLE STREAM AND THE LAND LYING ON BOTH SIDES THEREOF FOR A DISTANCE OF TWENTY-FIVE HUNDRED

(2500) FEET FROM THE THREAD OF THE STREAM, TO A DISTANCE OF TWENTY (20) MILES IN AN AIR LINE FROM THE PRESENT EASTERLY BOUNDARY OF SAID CITY AS ESTABLISHED BY THE CITY CHARTER GRANTED BY THE LEGISLATURE OF THE STATE OF TEXAS IN THE YEAR 1905; AND ALSO EXTENDING THE WESTERN LIMITS OF SAID CITY WESTWARDLY IN A GENERAL DIRECTION WITH SAID BUFFALO BAYOU, SO AS TO INCLUDE SAID STREAM AND THE LAND LYING ON BOTH SIDES THEREOF FOR A DISTANCE OF TWENTY-FIVE HUNDRED (2500) FEET FROM THE THREAD OF SAID STREAM TO THE DIVIDING LINE BETWEEN THE ROBERT VINCE SURVEY AND THE CHARLES SAGE AND ALEX EWING SURVEYS, AND DECLARING AN EMERGENCY."

But said ordinance, except to such extent, if any, as the same may be amended hereby, is to remain in full force and effect and the said City of Houston is to have and exercise all the rights, powers, authority and privileges in said territory given by law and acquired by reason of the passage of said ordinance.

SECTION 6: Should any section or part of this ordinance be held unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity of such section or part shall in no wise affect, impair or invalidate the remaining portions thereof but as to such remaining portions the same shall be and remain in full force and effect; and should this ordinance for any reason be ineffective as to any part of the area hereby annexed to the City of Houston or as to any part of the area hereby declared and ordained to be within the city limits of the City of Houston, such ineffectiveness of this ordinance as to any such part or parts of any such area shall not affect the effectiveness of this

ordinance as to all of the remainder of such area and Council hereby declares it to be its purpose to annex to the City of Houston every part of the area described in Section 1 of this ordinance (subject, however, to the exception stated in Section 2 hereof) and every part of the area described in Section 3 of this ordinance, regardless of whether any other particular part or parts of the lands so described in Section 1 or in Section 3 hereof is or are effectively annexed to the City of Houston.

SECTION 7: That from and after the passage of this ordinance, the inhabitants of the territory hereby annexed shall be entitled to all the rights and privileges of other citizens of the City of Houston and shall be bound by the acts, ordinances, resolutions and regulations of the said City of Houston.

SECTION 8: The City Secretary is hereby authorized to publish this ordinance one time in some daily newspaper published in the City of Houston, Texas, and this ordinance shall not finally be passed until at least thirty days have elapsed after such publication.

Passed first reading this 31st day of October, 1956.
Passed second reading this ..... day of ....., 1956.
Passed third and final reading this ..... day of ....., 1956.
Passed this ..... day of ....., 1956.
Approved this ..... day of ....., 1956.

Mayor of the City of Houston

Approved:

F. F. BEADLE
First Assistant City Attorney

Annexation Book No. 1, Page No. 137-145.

* * * * *

## EXHIBIT "B"

462

Ordinance #3350 Cancelling & Annulling Ord. #2234 Passed on Its 1st Reading Feb. 1, 1956

An ordinance with a letter from the Mayor requesting that same be passed finally at this session of Council, entitled: "An ordinance annulling certain proceedings heretofore had in the matter of a certain proposed extension of the City Limits of the City of Houston as commenced by Ordinance No. 2234 passed on its first reading February 1, 1956; cancelling and anulling said ordinance; provided that this shall not effect the power of the City and its Council by any new or further proceedings, to annex to the City all or any part of the area proposed to have been annexed by said Ordinance No. 2234; and declaring an emergency", was submitted, read by caption and passed by the following roll call vote: Mayor Holcombe aye, Councilman Kesseler aye, Councilman Resweber aye, Councilman McLemore aye, Councilman Wilson aye, Councilman Brakefield aye, Councilman Welch aye, Councilman Reeves aye, and Councilman Marquette aye.

ADOPTED

Ordinance #3351 Extending the City Limits of The City of Houston First Reading

An ordinance entitled: "An ordinance extending the City Limits of the City of Houston to include all lands and area within certain limits and boundaries with certain exceptions, and annexing to the City of Houston all of the area within said limits and boundaries with certain exceptions; further extending the City Limits of the City of Houston by adding certain other additional territory thereto, to-wit: the area or areas comprising (a) the City's San Jacinto Reservoir (known as Lake Houston), (b) the City's San Jacinto River Dam and Appurtenant Lands; and (c) the City's New West Water Canal and the Right-of-Way therefor; providing that such ordinance shall not affect the jurisdiction of the

City of Houston over certain territory which was acquired by virtue of an ordinance passed April 18, 1913; providing a saving clause; and providing that the inhabitants of the territory hereby annexed shall be entitled to the rights and privileges of other citizens of the City of Houston and shall be bound by the Acts, Ordinances, etc., of said City", was submitted, placed on its first reading in full and passed by the following roll call vote: Mayor Holcombe aye, Councilman Kesseler aye, Councilman Resweber aye, Councilman McLemore aye, Councilman Wilson aye, Councilman Brakefield aye, Councilman Welch aye, Councilman Reeves no, and Councilman Marquette aye.

(CLERK'S EXPLANATORY NOTE — This Exhibit B is a photostat of a page of the City Council minutes and, by direction, all other entries on this page have been omitted as they do not affect this suit.)

* * * * *

**EXHIBIT "C"**

#3351

BOOK NO. F F F, PAGE NO 31

AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS, AND ANNEXING TO THE CITY OF HOUSTON ALL OF THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; FURTHER EXTENDNG THE CITY LIMITS OF THE CITY OF HOUSTON BY ADDING CERTAIN OTHER ADDITIONAL TERRITORY THERETO, TO-WIT: THE AREA OR AREAS COMPRISING (A) THE CITY'S SAN JACINTO RESERVOIR (KNOWN AS LAKE

HOUSTON), (B) THE CITY'S SAN JACINTO RIVER DAM AND APPURTENANT LANDS; AND (C) THE CITY'S NEW WEST WATER CANAL AND THE RIGHT-OF-WAY THEREFOR; PROVIDING THAT SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVING CLAUSE; AND PROVIDING THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF CITY HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC., OF SAID CITY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1: That the boundaries and limits of the City of Houston are hereby extended so as to embrace and include all of the lands and area lying within the following described boundaries and comprised within the following limits (save and except only such of the land lying within such boundaries and limits as is described in the exceptions set forth or stated in Section 2 of this ordinance), to-wit:

(CLERK'S EXPLANATORY NOTE — The field notes appearing here are omitted by direction. They are the same as the field notes appearing in the ordinance attached as Exhibit A to Defendants' Motion for Summary Judgment, on Pages 39 through 61 of this Transcript except:

(1) On third and fourth reading, the 400 foot strip along Spencer Highway was not extended to the City limits of LaPorte but the strip was carried northerly from Spencer Highway along the west

side of Underwood Road and then easterly along the north side of Water Control and Improvement District No. 56 to the west line of the Town of Lomax, all in accordance with the amendment ordered by Motion No. 7042, Plaintiffs' Exhibit F, this Transcript, Page 115.)

SECTION 2: All of the area which is not now within the limits of the City of Houston, but which is comprised within the boundaries or limits hereinabove set forth is hereby annexed to and made a part of the City of Houston, save and except: — (a) such thereof as is now within the limits of any City, Town, or Village other than the City of Houston (whether such other City, Town, or Village be a Home Rule City or exists pursuant to incorporation under any general or special law of the State of Texas), and (b) the following described tract of land which includes the Bunker Hill Elementary School and grounds and described as follows, to-wit:

BEGINNING at the southwest corner of the Isaac Bunker Survey;

THENCE west (along a continuation westerly of the north line of Bunker Hill Village) 100 feet, to a point for corner;

THENCE N. 0° 19′ E. 977.4 feet, to a point for a corner;

THENCE E. 847.79 feet, to a point for a corner;

THENCE south 0° 12′ west, 977.39 feet more or less, to a point for a corner in the north line of Bunker Hill Village, said point being about in the center line of Taylorcrest Road or Street;

THENCE west along the north line of Bunker Hill Village 749 feet more or less, to the PLACE OF BEGINNING;

and the areas described in the foregoing exceptions (a) and (b) are not hereby annexed to the City of Houston.

SECTION 3. That the boundaries and limits of the City of Houston are also hereby extended so as to embrace and include the following described areas of land, and the following described areas of land are hereby also annexed and made a part of the City of Houston, to-wit, — being several parcels and strips of land and areas which together comprise and include (a) the City's San Jacinto Reservoir known as Lake Houston and the islands therein, but excluding from the lake area hereby annexed the portion thereof which extends over along Spring Creek and the portion thereof which extends beyond the boundary between Harris County and Montgomery County, (b) the lands on which there rests the City's San Jacinto River Dam and appurtenant structures and lands immediately adjacent thereto, and (c) the City's new West Water Canal and the right-of-way therefor; and (in parcels for convenience) described as follows:

FIRST PARCEL: Being the City's West Canal, including and together with the land occupied by any and all water pipe lines by which the water flowing through such Canal is carried across or underneath streams, roads, or railroads, or is otherwise carried through water pipe lines, together with all of the right-of-way for or occupied by such canal including such water pipe lines, and being a strip of land extending from the point in the City's present east City Limit Line where the City's new West Canal and its right-of-way crosses such present east City Limit Line (said point being a short distance north of Industrial Road, and just east of Federal Road) and extending in a generally northerly direction to the point where such West Canal and its right-of-way crosses the south boundary line of the line hereinafter referred to as "Second Parcel", said strip of land including in every instance the lands actually occupied by

the City's new West Canal, including the water pipe lines here just referred to but extending outwardly in every instance to the outer limit of the boundary of the City's right-of-way for such Canal and water pipe lines, and including in any event all of the following several tracts or parcels of land (and in the following references to various parcels of land as being parcels designated by the letter "W" followed by a numeral, the reference is to the parcel of land so referred to by such letter and numeral in that certain deed from the UNITED STATES OF AMERICA — FEDERAL WORKS AGENCY to the City of Houston dated September 25, 1945, and recorded in Volume 1559 beginning at Page 1 of the Deed Records of Harris County, Texas, as such several parcels are shown and described on these several exhibits which are attached to and made a part of said deed and recorded with said deed), to-wit: — (Beginning at the upper or northerly end of the strip of land constituting this FIRST PARCEL): — Parcel W-3; that certain parcel of land conveyed to the City by Alexander Deussen and R. B. Wallace by deed dated August 21, 1952, recorded in Volume 2493 at Page 132 of the Harris County Deed Records; that certain parcel of land conveyed to the City by Louise A. Swilley et al. by deed dated July 19, 1952, recorded in Volume 2473 at Page 271 of the Harris County Deed Records; Parcel W-5; Parcel W-6; Parcel W-7; Parcel W-8; Parcel W-8A; that certain strip or parcel of land which was reserved as right-of-way for canal purposes in the deed from the City of Houston to the State of Texas for the use of the State Game and Fish Commission dated May 28, 1952, and recorded in Volume 2484 at Page 474 of the Harris County Deed Records; that certain parcel of land conveyed to the City by C. G. Daugherty by deed dated December 8, 1953, recorded in Volume 2700 at Page 537 of the Harris County Deed Records; that certain tract

of land conveyed to the City by Mrs. Lillian V. Martin by deed dated September 8, 1953, recorded in Volume 2659 at Page 115 of the Harris County Deed Records; a tract of land described as follows, to-wit: — beginning at the most southerly or southwesterly corner of the above referred to Lillian V. Martin tract, thence in a southerly direction to the northwest corner of the parcel of land here next referred to as having been conveyed to the City by H. L. Downey et ux., thence easterly along the north line of the said Downey tract to its northeast corner, thence northerly to the southeast corner of the above referred to C. G. Daugherty tract, thence westerly or southwesterly along the southerly lines of the said Daugherty and Martin Tracts to the place of beginning; that certain tract of land conveyed to the City by H. L. Downey et ux. by deed dated August 7, 1952, recorded in Volume 2484 at Page 656 of the Harris County Deed Records; Parcel W-10 (except so much thereof as lies more than 80 feet west of the center line of the City's said new Canal); Parcel W-11; Parcel W-12; Parcel W-13; Parcel W-14; Parcel W-15; Parcel W-16; Parcel W-17; Parcel W-18; Parcel W-19; Parcel W-20; Parcel W-20A; Parcel W-21; Parcel W-22 (except so much thereof as lies east of the east line of the parcel of right-of-way here next referred to as having been acquired by the City from Bayou Homesites, Inc.); that certain parcel of land acquired by the City for right-of-way for said Canal from Bayou Homesites, Inc., by deed dated January 11, 1954, recorded in Volume 2732 at Page 427 of the Harris County Deed Records; a tract of land described as follows, to-wit: — beginning at the southwest corner of the tract of land here just referred to as having been acquired by the City from Bayou Homesites, Inc., thence southerly across Greens Bayou to the northwest corner of Parcel W-25, thence easterly along the north line of said Parcel W-25

to its northeasterly corner, thence northerly crossing Greens Bayou to the most easterly southeast corner of that certain tract of land hereinabove referred to as having been acquired by the City from Bayou Homesites, Inc., thence in a generally southwesterly direction with the easterly and southerly lines of the said Bayou Homesites, Inc., tract to the place of beginning; Parcel W-25; Parcel W-26; Parcel W-27; Parcel W-28; Parcel W-29; Parcel W-30; Parcel W-31; Parcel W-32; Parcel W-33; Parcel W-35; Parcel W-36; Parcel W-37; Parcel W-38; Parcel W-39; Parcel W-40; Parcel W-40A; Parcel W-41; Parcel W-42; Parcel W-43; Parcel W-44; Parcel W-45; Parcel W-46; Parcel W-47; Parcel W-48; Parcel W-49; Parcel W-50; Parcel W-51, to-wit — so much thereof as lies east of the City's present City Limit Line.

SECOND PARCEL: Being land on which there rest the City's San Jacinto River Dam, pump house and other appurtenant structures, and lands immediately adjacent thereto, to-wit, — the following several tracts or parcels of land, namely, — (A) that certain tract of land conveyed to the City of Houston by East Texas Oil Company by deed dated October 9, 1945, recorded in Volume 1394 at Page 533 of the Harris County Deed Records; (B) that certain tract of land conveyed to the City of Houston by Joseph Hornberger, Joseph Hornberger, Jr., and Robert E. Hornberger by deed dated May 18, 1946, recorded in Volume 1458 at Page 1 of the Harris County Deed Records; and (C) all of the bed and banks of the San Jacinto River which lie between the lands described in the two deeds here just referred to.

THIRD PARCEL: (Being the City's San Jacinto Reservoir now known as Lake Houston, except the portions thereof extending over along Spring Creek and the portion thereof

extending up into Montgomery County, but including and together with all islands in said lake), to-wit: all thereof (including the portion thereof immediately above the dam which is included within the description of "Second Parcel" above), to-wit, — being all of the lands above the City's San Jacinto River Dam which are inundated or covered with water at those times when the reservoir above the dam is completely filled with water and the water is flowing over the spillway of the dam to a depth of six inches above the top of the spillway; together with all islands which are in said reservoir or lake (but excluding from the lake area so described and hereby annexed the portion thereof which extends over along Spring Creek, and the portion thereof which extends beyond the boundary between Harris County and Montgomery County).

SECTION 4: Provided further nevertheless that if there is included within the general description provided in Sections 1 and 2 of this ordinance to be hereby annexed to the City of Houston any lands or area which it is not within the jurisdiction of the City of Houston to annex, the same is hereby excluded and excepted from the area to be hereby annexed as fully as if it had been hereinabove expressly described and excepted from such area.

SECTION 5: Provided, that nothing herein or by reason hereof is to be construed to in any wise affect, curtail or abandon the jurisdiction of the City of Houston over any territory not included herein, which was acquired and obtained by virtue of that certain ordinance passed by the City Council of said City on the 18th day of April, 1913, entitled: —

"AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF HOUSTON EASTWARDLY IN A GENERAL DIRECTION WITH BUFFALO BAYOU AND THE HOUSTON

SHIP CHANNEL, SO AS TO INCLUDE IN SAID CITY THE SAID NAVIGABLE STREAM AND THE LAND LYING ON BOTH SIDES THEREOF FOR A DISTANCE OF TWENTY-FIVE HUNDRED (2500) FEET FROM THE THREAD OF THE STREAM, TO A DISTANCE OF TWENTY (20) MILES IN AN AIR LINE FROM THE PRESENT EASTERLY BOUNDARY OF SAID CITY AS ESTABLISHED BY THE CITY CHARTER GRANTED BY THE LEGISLATURE OF THE STATE OF TEXAS IN THE YEAR 1905; AND ALSO EXTENDING THE WESTERN LIMITS OF SAID CITY WESTWARDLY IN A GENERAL DIRECTION WITH SAID BUFFALO BAYOU, SO AS TO INCLUDE SAID STREAM AND THE LAND LYING ON BOTH SIDES THEREOF FOR A DISTANCE OF TWENTY-FIVE HUNDRED (2500) FEET FROM THE THREAD OF SAID STREAM TO THE DIVIDING LINE BETWEEN THE ROBERT VINCE SURVEY AND THE CHARLES SAGE AND ALEX EWING SURVEYS, AND DECLARING AN EMERGENCY."

But said ordinance, except to such extent, if any, as the same may be amended hereby, is to remain in full force and effect and the said City of Houston is to have and exercise all the rights, powers, authority and privileges in said territory given by law and acquired by reason of the passage of said ordinance.

SECTION 6: Should any section or part of this ordinance be held unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity of such section or part shall in no wise affect, impair or invalidate the remaining portions thereof but as to such remaining portions the same shall be and remain in full force and effect; and should this ordinance for any reason be ineffective as to any part of the area hereby annexed to the City of Houston or as to any part of the area hereby declared and ordained to be within the city limits of the City of Houston, such ineffec-

tiveness of this ordinance as to any such part or parts of any such area shall not affect the effectiveness of this ordinance as to all of the remainder of such area and Council hereby declares it to be its purpose to annex to the City of Houston every part of the area described in Section 1 of this ordinance (subject, however, to the exception stated in Section 2 hereof) and every part of the area described in Section 3 of this ordinance, regardless of whether any other particular part or parts of the lands so described in Section 1 or in Section 3 hereof is or are effectively annexed to the City of Houston.

SECTION 7. That from and after the passage of this ordinance, the inhabitants of the territory hereby annexed shall be entitled to all the rights and privileges of other citizens of the City of Houston and shall be bound by the acts, ordinances, resolutions and regulations of the said City of Houston.

SECTION 8. The City Secretary is hereby authorized to publish this ordinance one time in some daily newspaper published in the City of Houston, Texas, and this ordinance shall not finally be passed until at least thirty days have elapsed after such publication.

Passed first reading the 31st day of October, 1956.

Passed second reading as amended this 21st day of November, 1956.

Passed third and final reading this ..... day of ....., 1956.

Passed this ..... day of ....., 1956.

Approved this ..... day of ....., 1956.

Approved: Mayor of the City of Houston

F. F. BEADLE
First Assistant City Attorney

Annex. Book No. 1, Page No. 145-152

• • • • •

## EXHIBIT "D"

29

(CLERK'S EXPLANATORY NOTE — This Exhibit consists of photostatic copies of three pages of the City Council minutes, and, by direction, all entries except the following are omitted as they do not affect this suit.)

Mayor Holcombe — Re: Annexation Ord.

Mayor Holcombe then asked the First Assistant City Attorney if he had any motion prepared in connection with the annexation ordinance.

Motion #6972 Rules Governing Procedure of City Council Remain Suspended

MOTION by Councilman Marquette that the rules governing the procedure of the City Council be and remain suspended in order to permit the further consideration and readings of Ordinance No. 3351 passed on first reading October 31, 1956. Seconded by Councilman Brakefield and carried.

ADOPTED

Vote: Mayor Holcombe, Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none.

Motion #6973 Annexation Ord. #3351 Be Amended To Exclude Bunker Hill Elementary School

MOTION by Councilman Wilson that the annexation ordinance passed on its first reading October 31, 1956, and being Ordinance No. 3351, be amended in the following respect, to-wit:— to exclude from such annexation the area comprising the Bunker Hill Elementary School and grounds together with strips of land 100 feet wide along the west, north and east sides of said School tract.

Seconded by Councilman Brakefield and carried.

ADOPTED

Vote: Mayor Holcombe, Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none.

C. Reeves — Re: People Vote on the Annexation

Councilman Reeves stated that he recalled that the annexation in its final form in 1949 was referred to the people for ratification and in view of the burdens the people are going to assume, also the debt burden, and in view of the fact that it was not an issue in the last campaign and none of the Council members were under a mandate on the annexation, he felt it only fair that the people vote on it.

30

Motion #6974 Annexation Ord. Be Submitted to a Referendum Election

MOTION by Councilman Reeves that the annexation ordinance, as finally adopted by the Council, be submitted to a referendum election for ratification on Saturday, December 29, 1956.

MOTION DIED for want of a second.

MOTION DIED

C. Marquette — Re: Taxes

Councilman Marquette stated that the way it looked to him the taxes would not be increased and asked the Mayor if they would. Mayor Holcombe replied that was correct in his opinion. Councilman Reeves then asked for how long a period of time and Mayor Holcombe stated that he could only speak for next year and the taxes would not be increased next year and he did not think it would be necessary after next year. Councilman Reeves stated that under our present budget it would mean $60.00 per annum for each man, woman and child and in the area to be annexed, the City would receive less than $30.00 per family; but he knew the annexation ordinance was going to be passed not withstanding that fact, but he believed it was an overly ambitious program; that the people should not be required to pay taxes to provide services for citizens elsewhere and he felt the Water District should be excluded from the ordinance.

Motion #6975 Fresh Water District No. 33 be Excluded From Annexation Ord.

MOTION by Councilman Reeves that Fresh Water District No. 33, be excluded from the annexation ordinance. Seconded by Councilman Welch.

ROLL CALL VOTE:

Mayor Holcombe voting no
Councilman Kesseler voting no
Councilman Resweber voting no
Councilman McLemore voting no
Councilman Wilson voting no
Councilman Brakefield voting no
Councilman Welch voting aye
Councilman Reeves voting aye
Councilman Marquette voting no

MOTION FAILED

FAILED

Motion #6976 Water Control and Impvt. District #62

MOTION by Councilman Reeves that Water Control and Improvement District No. 62, Eastridge Terrace, be excluded from the annexation ordinance.

MOTION DIED for want of a second.

MOTION DIED

C. Welch — Re: Annexing Water Districts

Councilman Welch stated that he looked at the overall picture and he found that the aggregate was worth the effort and he believed that the City should annex the districts and made a motion that the annexation ordinance be passed, which was seconded by Councilman Marquette. Councilman Reeves then asked if he would be permitted to make his motions and Mayor Holcombe stated that he could make whatever motions he desired. Councilmen Welch and Marquette withdrew their motion. Councilman Reeves stated he was not opposed to annexation per se as he voted for an annexation ordinance on its third reading when this ordinance was first proposed and he was not impugning the motives of his colleagues on the Council, that he had looked over the Water District bonded indebted-

ness and it was greater than the collaterals and for that reason he did not think it fair.

MOTION by Councilman Reeves that Water Control and Improvement District No. 59, be excluded from the annexation ordinance. Motion #6977 Water Control and Impvt. District #59

MOTION DIED for want of a second.

MOTION DIED

MOTION by Councilman Reeves that Water Control and Improvement District No. 54, with a bonded indebtedness of $940,000.00, population of 30 and with 10 houses thereon, be excluded from the annexation ordinance. Motion #6978 Water Control and Impvt. District #54 Be Excluded

MOTION DIED for want of a second.

MOTION DIED

MOTION by Councilman Reeves that Water Control and Improvement District No. 53, containing .3 square miles, 22 homes, 67 people and $320,000.00 outstanding indebtedness, be excluded from the annexation ordinance. Motion #6979 Water Control and Impvt. District #53

MOTION DIED for want of a second.

MOTION DIED

MOTION by Councilman Reeves that the Water Control and Improvement District No. 51, be excluded from the annexation ordinance. Motion #6980 Water Control and Impvt. District #51

MOTION DIED for want of a second.

MOTION DIED

MOTION by Councilman Reeves that the Water Control and Improvement District No. 49, be excluded from the annexation ordinance. Motion #6981 Water Control and Impvt. District #49

MOTION DIED for want of a second.

MOTION DIED

Motion #6982
Water Control and
Impvt. District #47

MOTION by Councilman Reeves that Water Control and Improvement District No. 47, Freeway Manor, containing .3 square miles, indebtedness of $6,850.00 per acre, be excluded from the annexation ordinance.

MOTION DIED for want of a second.

MOTION DIED

Motion #6983
Water Control and
Impvt. District #24

MOTION by Councilman Reeves that Water Control and Improvement District No. 24, Sharpstown, with $10,600,000.00 bonds voted, $5,000,000.00 not issued and $3,000,000.00 outstanding, with total population of 3,277, be excluded from the annexation ordinance.

MOTION DIED for want of a second.

MOTION DIED

31

C. Kesseler — Re:
Annexation

Councilman Kesseler stated he did not intend to say anything at this matter, but it seemed a touchy thing had been injected into it by one of the Councilmen and he wanted to say that very responsible people, such as the Chamber of Commerce, had made an inspection and recommended the passage of the ordinance; that the editors of all three newspapers had recommended the annexation program. Councilman Kesseler stated that if he based his vote on the present time, he would vote against the ordinance but he thought it was worthwhile in the future. Councilman Marquette stated that if you looked at the whole picture, it was not quite as bad as it looked and he wanted to say he admired Councilman Reeves for speaking out and saying what he thought about the ordinance.

Motion #6984
Annexation Ord.
Be Amended

MOTION by Councilman Brakefield that the annexation ordinance passed on its first reading October 31, 1956, and being Ordinance No. 3351, be amended in the following respect, to-wit:- That the call about the middle of the ninth

page of said ordinance reading: "THENCE N. 45° W., along a boundary of said District, to a point in the south line of the said Watts Road;" be amended to read: "THENCE N. 45° W., along a boundary of said District, to a point in the northwesterly line of the said Watts Road."

Seconded by Councilman McLemore and carried.

ADOPTED

Vote: Mayor Holcombe, Councilman Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch and Marquette voting aye. Councilman Reeves voting no.

Motion #6985 Rules Be Suspended & Ord. #3351 Be Called Up for a Further Reading as Amended

MOTION by Councilman Welch that the rules governing the procedure of the City Council be and remain suspended and that Ordinance No. 3351 passed on its first reading by the City Council on October 31, 1956, be called up for a further reading as amended pursuant to Motions this day heretofore passed.

Seconded by Councilman Brakefield and carried.

ADOPTED

Vote: Mayor Holcombe, Councilman Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none.

Ord. #3351 Was Presented

Ordinance No. 3351, as amended was then prosented and read in full by the City Secretary.

C. Reeves — Re: Annexation

Councilman Reeves stated that he wanted to answer Councilman Kesseler and he felt the Council was in effect voting for increased utility rates and the cost would be greater per family; that he felt Council should recognize what it was going to cost per acre for garbage and other services to the areas. Councilman Reeves further stated that he would be opposed to the annexation even if the others were opposed to it as the City was not in danger of encirclement and he did not think the Council kept faith

with the people because Council Members campaigned without mentioning to the people that they intended to annex any additional territory. Councilman Reeves further stated that he wanted it understood that he had the utmost confidence in Houston's future, provided the Council does not strangle the City with indebtedness and the City could be strangled with debt as well as encirclement. Councilman Reeves stated he had studied it from every angle and those were his reasons for voting against the ordinance.

Ord. Was Passed

The ordinance was then passed on roll call vote.

Ordinance #3351 Extending the City Limits of The City of Houston Second Reading

An ordinance, as amended, entitled: "An ordinance extending the City Limits of the City of Houston to include all lands and area within certain limits and boundaries with certain exceptions, and annexing to the City of Houston all of the area within said limits and boundaries with certain exceptions; further extending the City Limits of the City of Houston by adding certain other additional territory thereto, to-wit: the area or areas comprising (a) the City's San Jacinto Reservoir (known as Lake Houston) (b) the City's San Jacinto River Dam and Apurtenant Lands; and (c) the City's New West Water Canal and the right-of-way therefor; providing that such ordinance shall not affect the jurisdiction of the City of Houston over certain territory which was acquired by virtue of an ordinance passed April 18, 1913; providing a saving clause; and providing that the inhabitants of the territory hereby annexed shall be entitled to the rights and privileges of other citizens of the City of Houston and shall be bound by the Acts, Ordinances, etc., of said City", was submitted, placed on its second reading in full, as amended, and passed by the following roll call vote: Mayor Holcombe aye, Councilman Kesseler aye, Councilman Resweber aye, Councilman McLemore aye, Councilman Wilson aye, Councilman Brakefield aye, Councilman

Welch aye, Councilman Reeves no, and Councilman Marquette aye.

Mayor Holcombe — Re: Setting of Gas Rate

Mayor Holcombe stated that the Council now had before it, the matter of setting the gas rate and councilman Marquette made a motion to recess for lunch, which was seconded by Councilman Reeves and Councilman Wilson then moved that the motion be tabled, which was seconded by Councilman McLemore.

Motion #6986 Council Be Recessed for Lunch

MOTION by Councilman Marquette that Council be recessed for lunch.

Seconded by Councilman Reeves.

MOTION by Councilman Wilson that the motion be tabled.

Seconded by Councilman McLemore.

VOTE ON MOTION TO TABLE:

Mayor Holcombe, Councilman Kesseler, Resweber, McLemore, Wilson and Brakefield voting aye. Councilman Welch, Reeves and Marquette voting no.

MOTION TO TABLE CARRIED.

ADOPTED

Council Recess to 2:00 P.M.

After further discussion by Council, a motion was made by Councilman Marquette that Council be recessed to 2:00 p.m., which was seconded by Councilman Brakefield.

• • • • •

**EXHIBIT "E"**

#3351

BOOK NO. FFF, PAGE NO. 53

AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS, AND

ANNEXING TO THE CITY OF HOUSTON ALL OF THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; FURTHER EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON BY ADDING CERTAIN OTHER ADDITIONAL TERRITORY THERETO, TO-WIT: THE AREA OR AREAS COMPRISING (A) THE CITY'S SAN JACINTO RESERVOIR (KNOWN AS LAKE HOUSTON), (B) THE CITY'S SAN JACINTO RIVER DAM AND APPURTENANT LANDS; AND (C) THE CITY'S NEW WEST WATER CANAL AND THE RIGHT-OF-WAY THEREFOR; PROVIDING THAT SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVING CLAUSE; AND PROVIDING THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC., OF SAID CITY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

(CLERK'S EXPLANATORY NOTE — The body of this ordinance appearing as Exhibit E and consisting of 7 numbered sections has been omitted by direction, as the body is identical with the body of the ordinance attached as Defendants' Exhibit A to Defendants' Motion for Summary Judgment, on Pages 39 through 60 of this Transcript.)

SECTION 8: The City Secretary is hereby authorized to publish this ordinance one time in some daily newspaper published in the City of Houston, Texas, and this ordinance shall not finally be passed until at least thirty days have elapsed after such publication.

Passed first reading the 31st day of October, 1956.
Passed second reading as amended the 21st day of November, 1956.
Passed third reading as further amended this 28th day of November, 1956.
Passed fourth and final reading this ..... day of ....., 1956.
Passed this ..... day of ....., 1956.
Approved this ..... day of ....., 1956.

Mayor of the City of Houston

Approved:
F. F. BEADLE
First Assistant City Attorney

ANNEX. BOOK NO. 1, PAGE NO. 153-160.

* * * * *

**EXHIBIT "F"**

51

(CLERK'S EXPLANATORY NOTE — This exhibit consists of photostatic copies of three pages of the City Council minutes and, by direction, all entries except the following are omitted as they do not affect this suit.)

C. Welch — Re: Annexation Ord.

Councilman Welch stated he would like to present a motion in connection with the annexation ordinance. Mr. F. F. Beadle, First Assistant City Attorney, stated he had a motion suspending the rules if Council wanted to discuss the Annexation Ordinance.

Motion #7038 Rules Governing Procedure of City Council Be Suspended in Order to Discuss Ord. #3351

MOTION by Councilman Marquette that the rules governing the procedure of the City Council be and remain suspended in order to permit the further consideration and readings of Ordinance No. 3351, passed on its first reading October 31, 1956, and passed on its second reading as amended November 21, 1956.

Seconded by Councilman McLemore and carried.

ADOPTED

Vote: Mayor Holcombe, Councilman Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none.

C. Welch—Re: Submitted Written Motion

Councilman Welch then submitted a written motion, which was read by the City Secretary and Mayor Holcombe read the following remarks to Council:

"For personal reasons I ask the Council to eliminate FWID No. 43 from the City's Annexation Ordinance.

"In asking that this district be not annexed to the City of Houston I am not critical of, or casting any reflections on the Water District officials. The organizers of this district are in no different position from the officials of the other 28 districts which we are proposing to annex.

"A Trustee of this district has his office in the Texas National Bank Building adjacent to my son-in-law's office. They operate entirely separate businesses but they have had some business dealings together for several years. Further, I have an interest in a company which owns some land in the area comprising District 43.

"There are very few houses in this district and there is little likelihood that an effort will be made to incorporate the area for several years. The City therefore cannot be hurt by not annexing the area at this time. I will not be a member of the Administration which will take office in January 1958. That Administration can decide whether District 43 should be annexed to the City.

"I therefore hope that the members of Council will vote with me for the elimination of this District."

The Mayor then called for a vote on the motion.

Motion #7039 Exclude FWSD No. 43 From the City's Annexation Ord.

COUNCILMAN WELCH PRESENTED THE FOLLOWING WRITTEN MOTION:

Inasmuch as there remains sufficient time for amendment and publication of Ordinance No. 3351 prior to final reading on December 31, 1956, and inasmuch as there exists no threat of incorporation, either now or in the foreseeable future in this District, I therefore move for the exclusion of FWSD No. 43.

52

The total area encompassed in this district is .9 square miles; it contains a total of 5 houses with a population of 18 persons; the total market value of this area is $598,316, while the bonded debt is $1,200,000.

/s/ Louie Welch

Motion #7039 (Continued)

ROLL CALL VOTE:

Mayor Holcombe voting aye
Councilman Kesseler voting aye
Councilman Resweber voting aye
Councilman McLemore voting aye
Councilman Wilson voting aye
Councilman Brakefield voting aye
Councilman Welch voting aye
Councilman Reeves voting aye
Councilman Marquette voting aye

MOTION CARRIED

ADOPTED

C. Welch — Re: Submitted Written Motion Relative to Other Water Districts

Councilman Welch then submitted a written motion relative to other Water Districts, which was read by the City Secretary. Councilman Reeves stated he wanted to speak in support of the motion, that it included four of the District

he had asked to be excluded last week, the first of which was No. 33 and according to the information furnished Council it has two houses, six people, .3 square miles and an indebtedness of $3,385.00 per acre. Councilman Reeves further stated that the District was organized after annexation was discussed, the petition being submitted in March and he hoped every member of Council would support the motion.

Motion #7040 Exclude FWSD No. 33, WCID No. 53, WCID No. 54, WCID No. 57, and WCID No. 62 From the City's Annexation Ordinance

COUNCILMAN WELCH PRESENTED THE FOLLOWING WRITTEN MOTION:

Inasmuch as there remains sufficient time for amendment and publication of Ordinance No. 3351 prior to final reading on December 31, 1956, and inasmuch as there exists no threat of incorporation, either now or in the foreseeable future in these Districts, I therefore move for the exclusion of FWSD No. 33, WCID No. 53, WCID No. 54, WCID No. 57, and WCID No. 62.

The total area encompassed in these districts is 2.0 square miles; they contain a total of 50 houses with a combined population of 149 persons; the total market value of this area is $1,708,100, while the bonded debt is $3,031,000.

/s/ Louie Welch

ROLL CALL VOTE:

Mayor Holcombe voting no
Councilman Kesseler voting no
Councilman Resweber voting no
Councilman McLemore voting no
Councilman Wilson voting no
Councilman Brakefield voting no
Councilman Welch voting aye
Councilman Reeves voting aye
Councilman Marquette voting no

MOTION FAILED

FAILED

C. Reeves — Re: Water Districts

Councilman Reeves then made a motion to exclude Fresh Water District No. 6, Pine Village and District No. 36.

Motion #7041 Eliminate Water District No. 6 & No. 41 from the Annexation Program

MOTION by Councilman Reeves that Fresh Water Supply District No. 6, Pine Village containing .1 of a square mile, indebtedness of $340,000.00, or an amount equal to $5,310.00 per acre be eliminated from the annexation program and also Fresh Water Supply District No. 41, which has 1 square mile of area, $1,400,000.00 Bonds voted and like District No. 36 was created after annexation was submitted, be excluded.

MOTION DIED for want of a second.

MOTION DIED

C. Reeves — Re: Annexing Fresh Water Districts

Councilman Reeves stated that the Council had had a request dealing with the annexation and he thought the request should be discussed before passage of the Ordinance. Councilman Reeves stated that the City was taking away the people's right to create their own Fresh Water Districts and that they could not develop the property until the City could take utilities to that area and that if the City took away their right to bring in their own utilities the annexation was inherently wrong.

C. Marquette — Re: Increased Tax

Councilman Marquette asked Mayor Holcombe if the tax payers of Houston would have an increased tax burden on their shoulders by the City passing the annexation ordinance and Mayor Holcombe stated that he would say what he had said before, that he did not think so.

Motion #7042 Amend Annexation Ordinance #3351

MOTION by Councilman Kessler that the annexation ordinance passed on its first reading October 31, 1956, and passed on its second reading as amended November 21, 1956, and being Ordinance No. 3351, be further amended so that instead of the 400-foot Spencer Highway strip extending to the west city limits of La Porte, such strip will be

carried northerly from the Spencer Highway along the west side of Underwood Road and then easterly along the north side of Water Control and Improvement District No. 56 to the west line of the Town of Lomax.

Seconded by Councilman Wilson and carried.

ADOPTED

Vote: Mayor Holcombe, Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none.

53

Motion #7043 Rules Governing Procedure of City Council Be and Remain Suspended & Ord. #3351 be Called for Further Reading

MOTION by Councilman Kesseler that the rules governing the procedure of the City Council be and remain suspended and that Ordinance No. 3351, passed on its first reading on October 31, 1956, and passed on its second reading as amended on November 21, 1956, be called up for a further reading as further amended pursuant to motions this day heretofore passed.

Seconded by Councilman McLemore and carried.

ADOPTED

Vote: Mayor Holcombe, Councilman Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none.

Ordinance #3351 Further Extending the City Limits of The City of Houston Third Reading

An ordinance, as further amended, entitled: "An ordinance extending the City Limits of the City of Houston to include all lands and area within certain limits and boundaries with certain exceptions, and annexing to the City of Houston all of the area within said limits and boundaries with certain exceptions; further extending the City Limits of the City of Houston by adding certain other additional territory thereto, to-wit: The area or areas comprising (a) the City's San Jacinto Reservoir (known as Lake Houston), (b) the City's San Jacinto River Dam and appurtenant lands; and (c) the City's New West Water Canal and the

right-of-way therefor; providing that such ordinance shall not affect the jurisdiction of the City of Houston over certain territory which was acquired by virtue of an ordinance passed April 18, 1913; providing a saving clause; and providing that the inhabitants of the territory hereby annexed shall be entitled to the rights and privileges of other citizens of the City of Houston and shall be bound by the Acts, Ordinances, etc., of said City", was submitted, placed on its third reading in full, as so further amended, and passed by the following roll call vote: Mayor Holcombe aye, Councilman Kesseler aye, Councilman Resweber aye, Councilman McLemore aye, Councilman Wilson aye, Councilman Brakefield aye, Councilman Welch aye, Councilman Reeves no, and Councilman Marquette aye.

* * * * *

**EXHIBIT "G"**

MOTION No. 7265

MOTION by Councilman Wilson that the meeting be adjourned to 9:30 a.m. Monday, December 31, 1956, for the purpose of then considering, for its final passage, Ordinance No. 3351, being proposed annexation ordinance, and such other business as may be brought up at that time.

Seconded by Councilman Brakefield and carried.

Mayor Holcombe, Councilmen Kesseler, Resweber, Wilson, Brakefield, Welch, Reeves and Marquette voting aye.

Nays none.
Passed this 26th day of December, 1956.
Approved this 26th day of December, 1956.

/s/ O. F. HOLCOMBE
Mayor of the City of Houston

Councilman McLemore absent

* * * * *

## EXHIBIT "H"

(CLERK'S EXPLANATORY NOTE — By direction, Exhibit H attached to this affidavit has been omitted as it is a duplicate of Exhibit C attached to the Defendants' Motion for Summary Judgment which exhibit appears on Pages 63 through 64 of this transcript.)

* * * * *

## EXHIBIT "I"

ORDINANCE NO. 57-144

February 6, 1957.

AN ORDINANCE FIXING THE DATES ON WHICH HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICTS NUMBERS 22, 24, 26, 39, 44, 49, 51, AND 59, AND HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NUMBER 23 SHALL BE ABOLISHED AND THE CITY TAKE OVER THEIR PROPERTIES AND ASSETS AND ASSUME THEIR DEBTS, LIABILITIES AND OBLIGATIONS AND THEREAFTER PERFORM THEIR FUNCTIONS AND SERVICES; APPROPRIATELY REQUESTING THE CITY CONTROLLER AND DIRECTING THE ADMINISTRATIVE DEPARTMENTS OF THE CITY IN CERTAIN MATTERS RELATED THERETO; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, it is provided in Article 1182c-1 that when all the territory within any water control or fresh water supply district is annexed to a city the city shall take over all of its properties and assets and assume its debts, liabilities and obligations and perform its functions and services with the governing body of the city to designate by ordinance the

date upon which such shall occur but in no event later than ninety (90) days after the effective date of such annexation; and

WHEREAS, by an annexation which became effective December 31, 1956, all of the territory within each and all of the several water districts hereinabove and hereinafter referred to became so annexed to the City of Houston; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1. On the respective dates hereinbelow set forth immediately following the designation of the district in question, the following districts shall be abolished and on such respective dates the City of Houston shall take over all of the properties and assets and assume all of the debts, liabilities and obligations of such respective districts and shall thereafter perform all of the functions and services of such districts, to-wit:

Harris County Water Control and Improvement District Number 44, on February 7, 1957;

Harris County Fresh Water Supply District Number 23, on February 11, 1957;

Harris County Water Control and Improvement District Number 26, on February 13, 1957;

Harris County Water Control and Improvement District Number 51, on February 15, 1957;

Harris County Water Control and Improvement District Number 59, on February 15, 1957;

Harris County Water Control and Improvement District Number 49, on February 18, 1957;

Harris County Water Control and Improvement District Number 24, on February 20, 1957;

Harris County Water Control and Improvement District Number 22, on February 25, 1957;

Harris County Water Control and Improvement District Number 39, on February 27, 1957.

SECTION 2. The City Controller is hereby requested on the respective dates stated above to make all necessary arrangements to take over the bank accounts, other moneys and funds and to procure the custody of all of the records of said districts, save and except for the detailed books and records relating to their accounts with their water customers. The Director of Utilities is directed to make all necessary arrangements to take over on said respective dates the operation of the water plants of any of such districts which are operating such plants, together with the procurement of the records relating to their water customers and to cause appropriate accounts and records to be set up by the City of Houston related to all thereof. The Director of Public Works is directed to similarly take over the operation of the sewer plants and facilities. Both of such Directors are directed to make appropriate inventories or other records of lands, buildings, supplies, office equipment and other equipment and personal property found in the ownership or possession of any of such districts and to report to the Mayor their recommendations as to the continued use thereof by the City or its disposal where not needed by the City; and all departments and personnel of the City are directed to do all things necessary and appropriate to accomplish the taking over of the properties, functions and operations of such districts in such manner as will result in no more inconvenience to the residents in these areas or confusion of any sort than may be unavoidable.

SECTION 3. There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction, and the Mayor Pro Tem having in writing declared the existence of such emergency and requested such passage, this ordinance shall be passed finally on the date of its introduction, this 6th day of February, A. D. 1957, and shall take effect immediately upon its passage and approval by the Mayor Pro Tem.

Passed this 6th day of February, A. D. 1957.

Approved this 6th day of February, A. D. 1957.

GEORGE G. MARQUETTE, JR.
Mayor Pro Tem of the City of Houston

Approved:
First Assistant City Attorney

FFB:kp L. D. File No. 18,583-B

• • • • •

**EXHIBIT "J"**

Ordinance No. 57-143

MAYOR'S OFFICE
HOUSTON, TEXAS

February 6, 1957

Honorable City Council of the City of Houston
City Hall

Gentlemen:

In accordance with the provisions of the Charter of the City of Houston, I submit to you the following ordinance with the request that it be passed finally on the date of its

introduction. There exists a public emergency requiring such action and I accordingly request that you pass the same if it meets with your approval.

Yours very truly,

/s/ GEORGE G. MARQUETTE, JR.
Mayor Pro Tem
of the City of Houston

AN ORDINANCE MAKING SUNDRY PROVISIONS RELATED TO THE MANAGEMENT AND OPERATION OF CERTAIN WATER CONTROL AND IMPROVEMENT AND FRESH WATER SUPPLY DISTRICTS, PENDING THE TERMINATION OF LITIGATION ATTACKING A CERTAIN RECENT ANNEXATION; EXPRESSLY PROVIDING THAT DISBURSEMENTS BY OR ON ACCOUNT OF SUCH DISTRICTS SHALL BE PURSUANT TO A CERTAIN RESOLUTION; PROVIDING THAT THIS ORDINANCE CONSTITUTES NO WAIVER OF OR ADMISSION OF ANY INVALIDITY IN SUCH ANNEXATION; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, by an ordinance passed on its final reading and approved on December 31, 1956, there was annexed to the City of Houston an area which included all of the lands lying respectively within a large number of Water Control and Improvement Districts and Fresh Water Supply Districts, by virtue of which it is in effect required and commanded by Article 1182c-1 of the Texas Revised Civil Statutes that any such district be abolished and its operations, responsibilities, assets and obligations be taken over and

assumed by the City of Houston upon a date to be fixed by the City Council of the City of Houston but not to be later than ninety (90) days after the effective date of the annexation, pursuant to which Statute the City Council has by ordinance fixed the dates upon which certain of such districts have passed or will pass out of existence and the City of Houston so succeed to their respective assets and obligations and will hereafter by ordinance or ordinances fix the dates upon which the others thereof will so pass out of existence and their obligations and assets become the obligations and assets of the City of Houston; and

WHEREAS, there is pending in the District Court of Harris County, Texas, a suit attacking the effectiveness of the ordinance making such annexation and until the termination of such suit the governing bodies of certain of such districts do not feel that they can safely surrender to the City their entire responsibility and authority in the matter of the management and operation thereof, and the governing bodies of others of such districts are unwilling to surrender their such authority and responsibility to the City unless assured that until such litigation is terminated, the City will make no such changes in the general manner of such operations and, in particular, in the matter of charges for the services rendered by such districts for the water, sewer and garbage services by them rendered as might result in the depletion and impairment of the funds of such respective districts impairing and endangering their ability to meet their currently maturing obligations or to provide funds required to be set aside for the payment of maturing interest and principal upon their bonded debt (thereby creating a serious danger of default in such bonds in the event the annexation should be held to be ineffective and the City, on account thereof, unable by law to provide funds therefor

which it would otherwise provide and for which it would now be making provision but for the pendency of such suit); impairing also the ability of the district to provide its services to new homes within its area and in fact creating a serious danger of the district's funds becoming so depleted that it would be unable to avoid suspending operations entirely; and

WHEREAS, notwithstanding it was the purpose and intention of the City and its City Council when such annexation was considered and when such annexation ordinance was finally passed on December 31, 1956, to immediately — upon taking over the operation of each such district as required by law — reduce the water rates to the same rates charged by the City in the operation of its general municipal water system, and to eliminate any residential sewage charge or garbage collection charge to the end that for such utility services the residents of such districts would bear no greater burden than the residents of other parts of the City receiving water from the City's domestic water system and required to pay no charge for sewer service or for garbage pickup, the City Council now recognizes that if such course is immediately pursued without awaiting the termination of the pending litigation, some or all of the dire possibilites above recognized might well become realities; and

WHEREAS, it is therefore deemed proper, in order to minimize as far as possible the dangers above referred to, to make the following provisions related to the management and operation of any and of all such districts until such time as, by final judgment in the suit above referred to, the City's said annexation is adjudged and decreed to be valid and effective; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1. In those instances in which the governing body of the affected district surrenders and turns over to the City through its responsible departments the entire operation and responsibility for the operation of the district and its plants and facilities: —

(a) As required by Article 1182c-1, such operation shall be kept wholly separate from the City's general operations of its water, sewer and garbage facilities, respectively, and there shall be no commingling of the funds from the operation of the district and its facilities with the general funds of the funds of the City.

(b) The City will charge and there are hereby established as the charges to be made for water service, sewer service and garbage collection of and in such district the same charges and rates of charges as those which had been duly established and were being made by the district on December 31, 1956. As already provided by Section 3 of the resolution hereinafter referred to, all collections of or for the account of the district, whether from taxes by it duly levied or from the operation of any of its utility systems or otherwise, shall be paid into the respective account or accounts into which the collection would be required to be paid as a collection of the district under the laws governing such district and orders heretofore duly adopted by its governing body; and in observing the provisions of this subparagraph of this section of this present ordinance, the City Controller and other accounting officials of the City shall be entitled to presume that the fund or bank account into which any particular type of receipt was being placed by the district in its operations immediately prior to De-

cember 31, 1956, was and is a proper fund so established therefor.

Disbursements from such respective funds shall be in the manner authorized and subject to the provisions of the resolution hereinafter referred to except in those instances, if any, in which the affected bank, upon proper assurances or authorization by the governing body of the affected district, or otherwise, may be willing to treat such funds as funds of the City of Houston and permit withdrawal therefrom upon authorized City signatures only, to-wit, by City warrant duly issued and signed as distinguished from requiring that the warrant or check be initially that of the district, countersigned by the City Controller as by such resolution provided.

(c) In that the districts have in general rendered a single monthly bill to each resident for all of the services rendered by the district and in that the Utilities Department of the City of Houston, through its Water and Garbage Divisions, respectively, operates those facilities and services of the City and in that the City's Department of Public Works and Engineering, although operating the City's sewer facilities, does not have appropriate billing and accounting machinery and facilities appropriate to billing, keeping account of and collecting for many hundreds of sewer service accounts, the City's Director of Utilities is hereby charged with the responsibility of billing the residents in each such district for all three of such services, although the physical operation of the sewer facilities will be and is hereby made the responsibility of the City's Director of Public Works and Engineering.

SECTION 2. In those instances in which the governing body of a district is unwilling on account of the uncertain-

ties created by the pendency of the suit referred to in one of the preambles to this ordinance, or for any other reason deemed sufficient by it, to turn over the actual management and operation of the district and its facilities to the City until such annexation is adjudged valid and binding by final judgment in said suit, the governing body of such district is hereby authorized to continue in the possession, management, operation and control of all of the properties, facilities and funds of such district and in so doing, they are hereby declared to be and shall be deemed to be the agents of the City of Houston and authorized by the City as its such agents to do and perform in connection with such district and its facilities and operations every act which it was their duty or authority to do or perform prior to the passing out of existence of such district by virtue of the provisions of Article 1182c-1, subject, however, to the following limitations upon such authority:—

(a) They shall charge, enforce, and collect for the water, sewer and garbage services, respectively by them so rendered charges at the same respective rates as the charges which they were making on and immediately prior to December 31, 1956, and shall diligently enforce by every legal means available to them the payment of such charges. No change shall be made in any such rate of charge except by order of the governing body of the affected district and no such change shall be put into effect until the same is approved by motion or other proper order of the City Council.

(b) They shall add no new employees, except by way of replacement at the same or a lower wage or salary of an employee resigned, discharged or otherwise leaving their employment; and shall not make any change in the wage or salary paid to the holder of any position except by order of

the governing body of the district, and such change shall not be put into effect until approved by motion or other proper order of the City Council.

(c) They shall make no purchases except of supplies and materials reasonably necessary for the operation, maintenance and repair of their water, sewer, garbage and office facilities, and shall make no such purchase unless they then have in the fund from which the payment therefor is to be made or have a reasonable expectation in ordinary course of having in such fund an amount sufficient to pay for the items purchased when due in accordance with the terms of the purchase. While they may connect new customers to their existing water and sewer lines on the same terms and agreements with the respective customers as those on which they were permitting such connection on and immediately prior to December 31, 1956, they shall make no extension and enter into no contract for any extension or looking to any extension of any of their such lines except upon the approval of the City's Director of Utilities as to any water line construction or any increase in garbage collection facilities, or the approval of the City's Director of Public Works and Engineering as to any extension of their sewer lines. They shall in no event undertake any such extension or enter into any contract therefor unless they then have in the fund out of which payment therefor is to be made an amount sufficient for such payment over and above any amounts necessary to cover obligations previously created against such fund. They shall in no event enter into any contract by which any person or any property will become entitled to receive water, sewer or garbage service for any period of time longer than six months except at the district's standard schedule of rates and charges for such service; and they shall enter into no contract nor make any

purchase by which the district will or may become obligated to pay more than $500.00 except upon satisfying the City Controller that the district has, unencumbered by previous orders or purchases, a sufficient amount to pay therefor out of the fund from which payment is to be made, his such approval to be evidenced by his appropriate certificate to that effect; and no such contract shall be binding upon the City of Houston as their principal in the absence of such approval by the City Controller.

(d) They shall allow themselves for their attendance at meetings of their such governing body no greater amount than the amount which they have heretofore been so allowing themselves; and shall hold their such meetings for which they are so paid with no greater frequency than in the past.

(e) While they may continue the employment of engineers and attorneys now employed by them upon the same terms as in the past as evidenced by orders of such governing body duly adopted prior to the date fixed by the City Council on which the district legally passes out of existence, subject to the effectiveness and validity of the annexation herein referred to, as provided by Article 1182c-1, they shall make no new agreements for such employment except by order of their governing body and no such new employment or agreement therefor shall take effect until the same is approved by motion or other proper order of the City Council; provided, that any attorney heretofore employed by the district to prosecute or defend any litigation affecting the district or to whom any legal matter has been referred for handling for the district, but without any express agreement as to the amount or terms of his compensation, is hereby authorized to continue his such employment and

shall receive therefor a reasonable fee to be approved by the governing body of such district but subject to the approval of the City Council of any fee of more than $250.00 for any single piece of work.

(f) All disbursements and payments by such district or out of the funds of any such district shall be in the manner provided and subject to the provisions of a resolution of the City Council of the City of Houston passed and approved January 30, 1957, of which the following is the caption, to-wit:

> "A RESOLUTION PROVIDING FOR JOINT CONTROL OF THE FUNDS OF CERTAIN WATER CONTROL AND IMPROVEMENT AND FRESH WATER SUPPLY DISTRICTS BY THE CITY CONTROLLER AND PROPER OFFICES OF SUCH DISTRICTS, PENDING THE TERMINATION OF LITIGATION ATTACKING A CERTAIN RECENT ANNEXATION; MAKING SUNDRY OTHER PROVISIONS RELATED TO SUCH DISTRICTS AND THEIR OPERATION DURING SUCH PERIOD; PROVIDING THAT THIS RESOLUTION CONSTITUTES NO WAIVER OF OR ADMISSION OF ANY INVALIDITY IN SUCH ANNEXATION; AND DECLARING AN EMERGENCY."

SECTION 3. By the passage of this ordinance, the City Council does not waive or abandon the annexation ordinance herein referred to nor any of the City's rights, duties or obligations pursuant to or arising from such annexation, nor does it in any way admit any invalidity or ineffectiveness of such annexation, nor does the City admit that any Water Control and Improvement District or Fresh Water District within the annexed area has not or will not at a date to be hereafter fixed by the Council wholly cease to

exist; but this ordinance is adopted solely for the purpose of minimizing to the utmost extent possible any danger of default, either immediately or in the future, upon any of the bonds of any such district or the possibility of any such district having its operating funds so depleted as to endanger its ability to continue its operations and the performance of those functions and duties for which it was formed and which must be performed if dire general public confusion and hardship is not to occur; the City Council expressly finding and determining that on account of the matters hereinabove recited and referred to, such danger can only be avoided by authorizing in the manner herein provided for the continued operation of such several districts on substantially the same basis as in the past so far as concerns their receipts and revenues on the one hand and their expenses and costs of operation on the other hand.

SECTION 4. There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction, and the Mayor Pro Tem having in writing declared the existence of such emergency and requested such passage, this ordinance shall be passed finally on the date of its introduction, this 6th day of February, A. D. 1957, and shall take effect immediately upon its passage and approval by the Mayor Pro Tem.

Passed this 6th day of February, A. D. 1957.

Approved this 6th day of February, A. D. 1957.

/s/ GEORGE G. MARQUETTE, JR.

Mayor Pro Tem of the City of Houston

FILED February 8, 1957

Filed Feb. 8, 1957

## PLAINTIFFS' REQUEST FOR ADMISSIONS

TO: CITY OF HOUSTON AND ROY B. OAKES,
City Controller of The City of Houston,
DEFENDANTS IN THE ABOVE STYLED AND
NUMBERED CAUSE

Pursuant to the provisions of Rule 169 of the Texas Rules of Civil Procedure, you and each of you are requested to make the following admissions as to the truth of the following facts:

1. That the alleged passage on fourth and final reading as amended of alleged Ordinance No. 3351 on December 31, 1956, took place, without the City Council of the City of Houston at any time calling an election upon the question of the assumption by said City of the bonded indebtedness of the numerous water control and improvement districts and fresh water supply districts allegedly being annexed, at which election only citizens and property owners of said City of Houston whose property had been rendered for taxation would be eligible to vote.

2. That the Defendant, Roy B. Oakes, is now the duly elected, qualified and acting City Controller of the City of Houston and has held such office continuously from January 2, 1956 to the present date, with term expiring January 1, 1958.

3. That the Defendant, Oakes, as City Controller, did not on December 31, 1956, or on any date prior thereto, certify to the City, by certificate filed and recorded, that the money required for the making of the obligation by the City of Houston to pay the principal and interest of the issued and outstanding bonds or other obligations of the

water control and improvement districts and fresh water supply districts which the City of Houston claims to have annexed by said alleged Ordinance No. 3351, was then in the treasury and not appropriated for any other purpose; or certify to said council that funds would be received into the treasury and be available before the maturities of said obligations and that the funds anticipated had not already been appropriated for any other purpose.

4. That the Defendant, Oakes, as City Controller, actually made no official written certification of any character whatsoever to the City Council of the City of Houston concerning the issued and outstanding bonds or other obligations of any water control and improvement district or fresh water supply district supposedly being annexed by alleged Ordinance No. 3351, on or prior to December 31, 1956.

5. That, on or before December 31, 1956, the Defendant, Oakes, as City Controller, did not have in his possession, reports of audits, original books of accounts, sworn statements of liability or any other reliable public records showing the true and certain amounts and terms of the various bond and other debt liabilities of the water control and improvement districts and fresh water supply districts which the City of Houston claims to have annexed by alleged Ordinance No. 3351.

6. (The following is a separate request for admission as to each of the named water control and improvement districts and fresh water supply districts and a separate request is made for admission as to each district, totaling 29 requests in all.) That the entire territory of each of the following named water control and improvement districts (abbreviated WCID) and fresh water supply districts (abbreviated FWSD) is located within the area which the City

of Houston claims to have annexed by alleged Ordinance No. 3351:

(1) Harris County WCID No. 11
(2) Harris County WCID No. 20
(3) Harris County WCID No. 22
(4) Harris County WCID No. 24
(5) Harris County WCID No. 26
(6) Harris County WCID No. 32
(7) Harris County WCID No. 33
(8) Harris County WCID No. 34
(9) Harris County WCID No. 39
(10) Harris County WCID No. 42
(11) Harris County WCID No. 44
(12) Harris County WCID No. 47
(13) Harris County WCID No. 49
(14) Harris County WCID No. 51
(15) Harris County WCID No. 52
(16) Harris County WCID No. 53
(17) Harris County WCID No. 54
(18) Harris County WCID No. 57
(19) Harris County WCID No. 59
(20) Harris County WCID No. 62
(21) Harris County FWSD No. 23
(22) Harris County FWSD No. 26
(23) Harris County FWSD No. 28
(24) Harris County FWSD No. 29
(25) Harris County FWSD No. 33
(26) Harris County FWSD No. 34
(27) Harris County FWSD No. 36
(28) Harris County FWSD No. 41
(29) Harris County FWSD No. 43

7. That each of the said districts listed in Paragraph Number 6 above which the Defendants have admitted is located wholly within the area which the City of Houston claims to have annexed by alleged Ordinance No. 3351 had issued and outstanding bonds for which it was liable on December 31, 1956.

8. That each of the said districts set out in Paragraph Number 7 above, having issued and outstanding bonds, on December 31, 1956, had, at the time of the issue and sale of said bonds, secured the same by undertaking to levy ad valorem taxes against all property located in said district.

9. That, on December 31, 1956, the total principal amount of all issued and outstanding bonded indebtedness of all of the districts set out in Paragraph No. 7 above, exceeded the sum of $25,000,000.

10. That, on December 31, 1956, the total principal amount of all issued and outstanding bonded indebtedness of all of the districts set out in Paragraph No. 7 above, exceeded the sum of $30,000,000.

11. That, on December 31, 1956, the total principal amount of all issued and outstanding bonded indebtedness of all of the districts set out in Paragraph No. 7 above, exceeded the sum of $35,000,000.

12. That Ordinance No. 3384, adopted by voters at election on December 30, 1949, recorded in Annexation Ordinance Book #1, Page 32, extended the limits of the City of Houston and fixed the boundaries thereof, which ordinance was submitted to legislation by the people under Article VIIb of the Charter of the City of Houston.

13. That alleged Ordinance No. 3351 purports to fix the boundaries of the City of Houston in different locations than fixed by said Ordinance No. 3384 and to extend the limits of said City beyond the limits fixed by said Ordinance No. 3384.

14. That alleged Ordinance No. 3351 was not passed by the City Council upon an initative petition filed under said Article VIIb of said Charter.

Pursuant to said Rule 169, each of the matters of which an admission is requested shall be deemed admitted unless, not less than ten days after delivery of this request, you and each of you deliver the sworn statement prescribed by said rule.

(Signatures of Counsel)

FILED February 8, 1957.

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Filed Feb. 12, 1957.

**(DEFENDANTS') SUPPLEMENTAL AFFIDAVIT BY GEORGE NEAL IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.**

(CLERK'S EXPLANATORY NOTE — By direction, the Plaintiffs' Motion for Leave to Supplement Affidavits, to which the following affidavit is attached, has been omitted from this Transcript.)

BEFORE ME, the undersigned authority, on this day personally appeared GEORGE NEAL, who being by me first duly sworn upon oath deposes and says:

That he is the City Attorney for the City of Houston and was the City Attorney during the calendar year 1956, that he is the same person who made the affidavit attached as Exhibit "1" to the motion for summary judgment filed by the defendants in the above cause on January 17, 1957, and that he has personal knowledge of the following facts set out in this affidavit through attendance at meetings of the City Council of Houston or by examining records of the City Secretary of the City of Houston:

1. The exhibit attached hereto as Exhibit "A" is a true and correct copy of a motion passed by the City Council of the City of Houston on November 14, 1956, setting a public hearing on November 19, 1956, on the Ordinance No. 3351 for the annexation of additional territory to the City of Houston.

2. The exhibit attached hereto as Exhibit "B" is a true and correct copy of the minutes of a meeting of the City Council of Houston held on November 19, 1956, relating to the public hearing on Ordinance No. 3351.

3. The exhibit attached hereto as Exhibit "C" is a true and correct copy of an ordinance passed by the City Council of Houston on January 20, 1947, adopting rules of procedure for the City Council.

4. That the exhibits attached hereto as Exhibits "C-1", "C-2", "C-3" and "C-4" are all of the amendments which have been made to the rules of procedure for the City Council of Houston since the adoption of such rules on January 20, 1947, and that such rules, as so amended, were the rules of procedure for the City Council of Houston which were in effect throughout the calendar year 1956.

That the total area included within the annexation Ordinance No. 3351, passed finally by the City Council on December 31, 1956, is 187 square miles.

GEO. D. NEAL

SWORN AND SUBSCRIBED TO before me this 12th day of February, 1957.

HELEN D. McCREA
Notary Public in and for
Harris County, Texas

[NOTARIAL SEAL]

* * * * *

## EXHIBIT "A"

MOTION NO. 6840

MOTION by Councilman Kesseler that a Public Hearing be held in the City Council Chamber at 9 a.m., Monday, November 19, 1956, for the purpose of hearing those wishing to be heard on the annexation of additional territory to the City of Houston.

Seconded by Councilman Brakefield and carried.

Mayor Holcombe, Councilmen Kesseler, McLemore, Wilson, Brakefield, Welch and Reeves voting aye.

Nays none.
Passed this 14th day of November, 1956.
Approved this 16th day of November, 1956.

/s/ O. F. HOLCOMBE
Mayor of the City of Houston

Councilman Resweber out of the City.
Councilman Marquette absent.

* * * * *

## EXHIBIT "B"

### EXCERPTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS

Council Chamber, City Hall, Monday, November 19, 1956

An adjourned meeting of the City Council was held at 9:00 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, Resweber, Wilson, Brakefield, Reeves and Marquette, and Mr. George D. Neal, City Attorney, and Mr. F. F. Beadle, First Assistant City Attorney, present. Councilmen McLemore and Welch absent.

Mr. Jack Niven, 12903 Memorial Drive, stated he was Vice-President of Memorial Bend Civic Association and also

represented Gaywood, Memorial Plaza, Woodland Hollow and others. Mr. Niven stated that the people he represented did not mind paying taxes, if given services for the money paid and wanted to be assured by Council if taken into the City they would get Police Protection, Water, Lights and Garbage Service.

Mr. Charles V. Kilnar, 5802 South Main, stated he owned property off Chocolate Bayou Road on Clear Creek and stated he did not feel the people in that area should be burdened with City taxes.

Mr. George Hubert, Sr., Route 1, Box 355, stated he represented a group of property owners living three miles south of the Airport and the City Limits and that area had no improvements and the people raise rabbits, cows, sheep and other animals to help them pay for their homesteads; that they had a volunteer Fire Department and requested that they not be annexed to the City of Houston at this time, as they felt they would be paying City taxes without receiving benefits.

Mr. George Hubert, Jr., 7550 Almeda-Genoa Road, stated he represented the citizens in the area of Almeda-Genoa Road and Clear Creek and that 90% of the land was vacant grazing land; that the development of the property was slow and it would not be developed if taken into the City, that the area was sparsely settled and they did not feel they would receive services for the money paid for taxes. Mr. Hubert stated that there was no intention to incorporate and asked why the City was trying to annex the area at this time.

Mr. E. E. Forbes, Route 1, Box 374, read a statement to the City Council relative to the area in the vicinity of Almeda-Genoa Road and requested that the City Council not annex the territory.

Mayor Holcombe asked if there were any others to speak and Mr. George Hubert, Sr., asked for additional time, and stated that he understood that the City wanted to annex that territory so the people would not organize and that the City Council did not have to worry about the people organizing, as they were not going to organize.

Mr. Carl Dudley, Almeda, Texas, stated that they did not desire to be annexed to the City at this time and if the Council could see fit to leave the area out of the City it would be appreciated.

Mr. August Honerkamp, 12931 Player Street, spoke in behalf of the people in the Addition on South Main Street, stating that it would work a hardship on many people with vacant land and requested that the City Council not annex the territory at this time to give the property owners a little more time to develop their property.

Mr. John Ridley, 2606 Neils Esperson Building, stated he was interested particularly in the area adjoining Greens Bayou and that the first ordinance did not include this area. Mr. Ridley called attention to the building lines set by the Port Commission on Greens Bayou and requested the City Council to eliminate a strip on each side of the Bayou, the same as was done on the Houston Ship Channel. Mr. Ridley stated he discussed this request with Mr. Ralph Ellifrit, Director of City Planning, and Mr. Ellifrit stated there would be no serious objections to leaving out a strip on each side of Greens Bayou, if it was agreeable with the Legal Department. Mr. Ridley then requested that if it was not possible to eliminate a strip on each side of Greens Bayou, that both sides of the Bayou be annexed so that it would not create an awkward situation of having one bank of the Bayou in the City Limits and one bank of the Bayou

outside the City Limits. The request was referred to Mayor Holcombe, at his request.

MOTION by Councilman Kesseler, seconded by Councilman Wilson that Council be adjourned to 9:00 a.m., Wednesday, November 21, 1956.

COUNCIL ADJOURNED.

* * * * *

**EXHIBIT "C"**

ORDINANCE NO. 1266

AN ORDINANCE ADOPTING RULES OF PROCEDURE FOR THE CITY COUNCIL, REPEALING ALL ORDINANCES IN CONFLICT, PROVIDING A SEVERABILITY CLAUSE, AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1: That the following rules of procedure shall govern all meetings and proceedings of the City Council of the City of Houston. Wherever a rule embodies a provision of the City Charter indetically or in substance, notation has been made of that fact.

Rule 1. MEETINGS.

(a) The City Council shall meet in the Council Chamber in regular session every Wednesday commencing at 1:30 o'clock P.M. and such meetings may be adjourned from time to time by a majority of the members of Council present at such meeting and such adjourned meeting may be held at such place or places in the City Hall as may be designated by said City Council. Whenever Wednesday is a legal holiday, the regular meeting, unless otherwise provided for by motion, shall be held on the following day

at the same time and place. No notice shall be required to be given to any member of City Council of any adjourned meeting.

(b) Special meetings of the City Council shall be called by the City Secretary upon the written request of the Mayor, the City Manager or three members of the Council. (Charter, Article VII., Sec. 3).

(c) All members of the City Council and the City Manager shall be notified of all special meetings of said Council which notice shall be given by the City Secretary or some other duly authorized representative of the City. Said notice may be either written or verbal and may be served upon each party in person or through their representative either at their residence or place of business.

(d) Any meeting may be recessed for short periods of time upon majority vote of the members of Council present.

(e) Five members of the City Council shall constitute a quorum except where the number of Councilmen due to vacancies is reduced to less than six, in which event, a quorum shall consist of all the remaining members of the Council; but a less number than a quorum may adjourn or recess the meetings from time to time. (Charter, Article VII., Sec. 3).

(f) Citizens of the City shall have a reasonable opportunity to be heard at any and all regular and special meetings of the City Council in regard to any and all matters to be considered at such meetings. (Charter, Article VII., Sec. 3).

## Rule 2. PRESIDING OFFICER.

The Mayor shall preside at all meetings of the City Council but if for any reason he is absent from the City,

sick or unable to act, then the Mayor Pro Tem shall preside at such meetings and at such times shall exercise all of the powers and discharge the duties of the Mayor. (Charter, Art. VI., Sections 6 and 3).

Rule 3. ORDER OF BUSINESS.

The proceedings of the City Council shall be as follows:

(1) Calling the roll and marking absentees.
(2) Adopting and, if necessary, correcting the minutes.
(3) Opening of bids.
(4) Receiving petitions.
(5) Receiving reports of special and standing committees.
(6) Unfinished business.
(7) New business.
(8) City Manager reports.
(9) Considering and passing bills.

Rule 4. ATTENDANCE.

The members of the Council shall attend the regular and special meetings. If any member absent himself without just cause, the presiding officer may issue a warrant of attachment for such member to compel his attendance, which warrant may be executed by any person to whom the said presiding officer shall direct the warrant. The Council may impose a fine of not more than $10.00 upon any member failing to attend a meeting without just cause.

Rule 5. DECORUM.

Each member of the City Council and the City Manager shall be permitted to address the chair while either seated or standing and shall not be interrupted while speaking without his consent except by a call to order of the chair or to correct a statement of fact. The presiding officer of

the Council may fine any member guilty of indecorum or disorderly conduct in the Council not more than $10.00 or place such person under arrest.

Rule 6. QUESTIONS OF ORDER.

All questions of order shall be decided by the presiding officer with the right of appeal from his decision to the City Council, the majority of whom may override his decision.

Rule 7. SECRETARY.

The City Secretary shall be the clerk or Secretary of the Council whose duty it shall be to act as reading and recording clerk to the Council and to certify the correctness of the minutes and the journals and to perform such other duties as may be required of her by the City Council and the City Manager.

Rule 8. CONFIRMATIONS.

All confirmations or approvals required of the City Council shall be made by a majority vote of the members of Council present at said council meeting at the time of such confirmation or approval.

Rule 9. READINGS REQUIRED OF ORDINANCES AND RESOLUTIONS.

(a) All penal ordinances shall be published twice in an official newspaper of the City of Houston before final passage. Such ordinances shall be passed by reading the caption thereof at two separate meetings, one reading of which shall take place prior to the above referred to publication and the other reading subsequent thereto; provided, however, that upon request of any councilman such ordinance shall be read in full instead of by caption only.

(b) All ordinances granting franchises or special privileges shall be read in full at three regular meetings and shall never be passed as emergency measures. (Charter, Article II., Sec. 17).

(c) Ordinances authorizing contracts, appropriations or expenditures in excess of one thousand dollars under section 7a, article II, of the city charter as amended, relating to ownership of public utilities, etc., shall be read at three regular meetings. (Charter, Article II., Sec. 7a).

(d) Ordinances authorizing contracts for the purchase of electricity, etc., under section 7b, Article II, of the city charter as amended (for periods for less than five years), shall be read at three regular meetings and at least once in full. (Charter, Article II., Sec. 7b).

(e) Ordinances annexing territory by action of the City Council, under section 2b, article I, of the city charter as amended, shall be read at two regular meetings, the last of which shall not be less than thirty days after the publication of said ordinance in some daily newspaper published in the City of Houston. Such ordinances may be read by caption only unless request be made by a member of the City Council that they be read in full. (Charter, Article I., Sec. 2b).

(f) Ordinances authorizing contracts, appropriations or expenditures in excess of one thousand dollars, or any lease or sale relative to the harbor or waterfront, under section 9, article II, of the city charter as amended, shall be read in full at three regular meetings. (Charter, Article II., Sec. 9).

(g) The passage of all other ordinances and resolutions shall be by reading the same at three regular meetings by caption or title, unless a reading in full is requested by a member of the Council, except, however, that all ordinances which are public emergencies may be passed finally on the

date of their introduction when so requested by the Mayor in writing by one reading of the caption or title thereof unless additional readings of such caption or title are requested by a member or members of the City Council, which, in no event, shall exceed three readings of such caption.

Rule 10. MOTIONS.

All oral motions must be seconded before being put by the chair and upon the request of any member shall be reduced to writing by the party making the same. Written motions shall require no second.

Rule 11. MOTION TO RECONSIDER.

When a question has once been determined by the City Council, the same question shall not again be considered until ninety (90) days thereafter, and then only by motion to reconsider made by a member who voted with the prevailing side of such question.

Rule 12. SUSPENSION OF THE RULES.

Any one or all of these rules may be suspended by a vote of two-thirds of the members of the City Council, except such rules that embody provisions of the charter, identically or substantially.

Rule 13. ROBERT'S RULES OF ORDER.

The rules of procedure as stated in Robert's Rules of Order Revised, Edition of 1943 shall govern the proceedings of the City Council except when in conflict with the provisions of the city charter or city ordinances or the rules of procedure adopted hereby.

SECTION 2: That all rules of procedure heretofore passed by the City Council which are not included herein shall be and same are hereby repealed.

SECTION 3: That all ordinances or parts of ordinances, if any, in conflict herewith be and the same are hereby repealed to the extent of such conflict only.

SECTION 4: This ordinance is intended to be severable and should any part or portion thereof be held to be illegal or unconstitutional, then, in that event, the remainder of said ordinance shall not be affected thereby.

SECTION 5: There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction, and the Mayor having in writing declared the existence of such emergency and requested such passage, this ordinance shall be passed finally on the date of its introduction, this 20 day of January, A.D. 1947, and shall take effect immediately upon its passage and approval by the Mayor.

Passed this 20 day of January, A.D. 1947.
Approved this 20 day of January, A.D. 1947.

/s/ O. F. HOLCOMBE
Mayor of the City of Houston

* * * * *

**EXHIBIT "C-1"**

ORDINANCE NO. 1783

AN ORDINANCE AMENDING AN ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF HOUSTON ON JANUARY 20, 1947, ENTITLED

"AN ORDINANCE ADOPTING RULES OF PROCEDURE FOR THE CITY COUNCIL, REPEALING ALL ORDINANCES IN CONFLICT, PROVIDING A SEVERABILITY CLAUSE, AND DECLARING AN EMERGENCY,"

BY CHANGING THE REQUIREMENTS RELATIVE TO PUBLICATION AND PASSAGE OF PENAL ORDINANCES, AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1. That an ordinance passed by the City Council of the City of Houston on January 20, 1947, entitled:

> "AN ORDINANCE ADOPTING RULES OF PROCEDURE FOR THE CITY COUNCIL, REPEALING ALL ORDINANCES IN CONFLICT, PROVIDING A SEVERABILITY CLAUSE, AND DECLARING AN EMERGENCY."

be and the same is hereby amended so that Rule 9 of Section 1 thereof shall hereafter read as follows:

> "Rule 9. READINGS REQUIRED OF ORDINANCES AND RESOLUTIONS.
>
> (a) All ordinances granting franchises or special privileges shall be read in full at three regular meetings and shall never be passed as emergency measures. (Charter, Article II, Sec. 17.)
>
> (b) Ordinances authorizing contracts, appropriations or expenditures in excess of one thousand dollars under Section 7a, Article II, of the city charter as amended, relating to ownership of public utilities, etc., shall be read at three regular meetings. (Charter, Article II, Sec. 7a.)
>
> (c) Ordinances authorizing contracts for the purchase of electricity, etc., under Section 7b, Article II, of the city charter as amended (for periods for less than five years), shall be read at three regular meetings and at least once in full. (Charter, Article II, Sec. 7b.)
>
> (d) Ordinances annexing territory by action of the City Council, under Section 2b, Article I, of the city

charter as amended, shall be read at two regular meetings, the last of which shall not be less than thirty days after the publication of said ordinance in some daily newspaper published in the City of Houston. Such ordinances may be read by caption only unless request be made by a member of the City Council that they be read in full. (Charter, Article I, Sec. 2b.)

(e) Ordinances authorizing contracts, appropriations or expenditures in excess of one thousand dollars, or any lease or sale relative to the harbor or waterfront, under Section 9, Article II, of the city charter as amended, shall be read in full at three regular meetings. (Charter, Article II, Sec. 9.)

(f) The passage of all other ordinances and resolutions shall be by reading the same at three regular meetings by caption or title, unless a reading in full is requested by a member of the Council, except, however, that all ordinances which are public emergencies may be passed finally on the date of their introduction when so requested by the Mayor in writing by one reading of the caption or title thereof unless additional readings of such caption or title are requested by a member or members of the City Council, which, in no event, shall exceed three readings of such caption."

SECTION 2. There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction, and the Mayor Pro Tem having in writing declared the existence of such emergency and requested such passage, this ordinance shall be passed finally on the date of its introduction, this 6th day of August, A. D. 1947, and shall take effect immediately upon its passage and approval by the Mayor Pro Tem.

Passed this 6th day of August, A. D. 1947.
Approved this 6th day of August, A. D. 1947.

/s/ J. S. GRIFFITH
Mayor Pro Tem of the City of Houston

* * * * *

## EXHIBIT "C-2"

ORDINANCE NO. 3140

AN ORDINANCE AMENDING THE ORDINANCE ADOPTING RULES OF PROCEDURE FOR THE CITY COUNCIL BY ADVANCING THE MEETING TIME FROM 1:30 P.M. TO 10:30 A.M.; CONTAINING A REPEALING CLAUSE; AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1: That the ordinance adopting rules of procedure for the City Council, passed by the City Council January 20, 1947, as amended from time to time, is hereby amended so that hereafter Section 1 thereof, Rule 1, Meetings, subparagraph (a) shall read as follows:

> "(a) Effective Wednesday, November 3, 1948, the City Council shall meet in the Council Chamber in regular session every Wednesday commencing at 10:30 A.M. . . . . "

(The remainder of said ordinance as amended is hereby continued in full force and effect).

SECTION 2: All ordinance or parts of ordinances, if any, in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 3: There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction, and the Mayor having in writing declared the existence of such emergency and requested such passage, this ordinance shall be passed finally on the date of its

introduction, this 20th day of October, A. D. 1948, and shall take effect immediately upon its passage and approval by the Mayor.

Passed this 20th day of October, A. D. 1948.
Approved this 20th day of October, A. D. 1948.

/s/ O. F. HOLCOMBE
Mayor of the City of Houston

* * * * *

**EXHIBIT "C-3"**

ORDINANCE NO. 6709

AN ORDINANCE FURTHER AMENDING THE ORDINANCE ADOPTING RULES OF PROCEDURE FOR THE CITY COUNCIL BY AGAIN CHANGING THE MEETING TIME OF THE REGULAR MEETING OF THE CITY COUNCIL; PROVIDING AN EFFECTIVE DATE OF THE CHANGE HEREBY MADE IN MEETING TIME; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1: That the ordinance adopting rules of procedure for the City Council, passed and approved on January 20, 1947, as the same has from time to time heretofore been amended, is hereby again amended so that hereafter sub-paragraph (a) of Rule 1 (having to do with MEETINGS) of Section 1 of said ordinance shall read as follows:

> "(a) The City Council shall meet in the Council Chamber in regular session every Tuesday, commencing 3:00 o'clock p.m., and such meetings may be recessed or adjourned from time to time by a majority of the members of Council present at such meetings, and such recessed or adjourned meeting may be held at such

place or places in the City Hall as may be designated by the said City Council. Whenever Tuesday is a legal Holiday, the regular meeting, unless provided for by motion, shall be held on the following day at the same time and place. No notice shall be required to be given to any member of City Council of any recessed or adjourned meeting."

SECTION 2: The change in day and hour of the regular meeting of the City Council to be affected by this amendment to rule 1 shall be effective on Tuesday, October 16, 1951, and the first regular meeting under this amendment to said rule shall commence at 3:00 o'clock p.m., Tuesday, October 16, 1951.

SECTION 3: There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction, and the Mayor having in writing declared the existence of such emergency and requested such passage, this ordinance shall be passed finally on the date of its introduction, this 10th day of October, 1951, and shall take effect immediately upon its passage and approval by the Mayor.

Passed this 10th day of October, A. D. 1951.
Approved this 10th day of October, A. D. 1951.

/s/ O. F. HOLCOMBE
Mayor of the City of Houston

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**EXHIBIT "C-4"**

ORDINANCE #6929

AN ORDINANCE FURTHER AMENDING THE ORDINANCE ADOPTING RULES OF PROCEDURE FOR THE CITY COUNCIL BY AGAIN CHANGING THE

MEETING TIME OF THE REGULAR MEETING OF THE CITY COUNCIL; PROVIDING AN EFFECTIVE DATE OF THE CHANGE HEREBY MADE IN MEETING TIME; AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1. That the ordinance adopting rules of procedure for the City Council, passed and approved on January 20, 1947, as the same has from time to time heretofore been amended, is hereby again amended so that hereafter sub-paragraph (a) of Rule 1 (having to do with MEETINGS) of Section 1 of said ordinance shall read as follows:

> "(a) The City Council shall meet in the Council Chamber in regular session every Wednesday, commencing at 10:30 o'clock a.m., and such meetings may be recessed or adjourned from time to time by a majority of the members of Council present at such meetings, and such recessed or adjourned meeting may be held at such place or places in the City Hall as may be designated by the said City Council. Whenever Wednesday is a legal holiday, the regular meeting, unless otherwise provided for by motion, shall be held on the following day at the same time and place. No notice shall be required to be given to any member of City Council of any recessed or adjourned meeting."

SECTION 2. The change in day and hour of the regular meeting of the City Council to be effected by this amendment to Rule 1 shall be effective on January 15, 1952; and the last regular meeting to be held under the provisions of Rule 1 as the same reads prior to this amendment shall be the meeting which will be convened at 3:00 o'clock p.m., Tuesday, January 8, 1952; and the first regular meeting

under this amendment to said Rule 1 shall commence at 10:30 o'clock a.m., Wednesday, January 16, 1952.

SECTION 3. There exists a public emergency requiring that this ordinance be passed finally on the date of its introduction, and the Mayor having in writing declared the existence of such emergency and requested such passage, this ordinance shall be passed finally on the date of its introduction, this 18th day of December, 1951, and shall take effect immediately upon its passage and approval by the Mayor.

Passed this 18th day of December, A.D. 1951.
Approved this 18th day of December, A.D. 1951.

/s/ O. F. HOLCOMBE
Mayor of the City of Houston

Filed February 12, 1957.

* * * * *

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Filed Feb. 14, 1957

**(DEFENDANTS')**

**AFFIDAVIT OF GEORGE NEAL IN OPPOSING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO THE FIRST ALLEGED CAUSE OF ACTION AND THE SECOND ALLEGED CAUSE OF ACTION**

BEFORE ME, the undersigned authority, on this day personally appeared GEORGE NEAL, who being by me first duly sworn on oath deposes and says:

1. That he is the City Attorney for the City of Houston and was the City Attorney during the calendar year 1956 and that he has personal knowledge of the facts set out in this affidavit.

2. That he denies the statement in Paragraph 1 of the Sears affidavit that there is no record that the so-called

Ordinance Committee ever gave any public notice or held any public meeting or took any action in connection with said Ordinance No. 3351, and he states that all members of the Ordinance Committee signed a favorable report with respect to such ordinance, that a majority of such Committee were present at each meeting of the City Council at the time that any action was taken with respect to such ordinance, that a majority were present at the time of the passage of the motion by the Council on November 14, 1956, setting a public hearing at 9:00 A.M. on November 19, 1956, for the purpose of hearing those wishing to be heard on the annexation of additional territory to the City of Houston, that a majority of such members of the Ordinance Committee were present at the Council meeting on November 19, 1956, at which various citizens and members of the public were heard with respect to Ordinance No. 3351, and that all such facts appear in the minutes and records of the City Council of the City of Houston.

3. That he denies the statement in Paragraph 9 of the Sears affidavit that the records, minutes and ordinance books of the City of Houston do not contain any motion or ordinance declaring that the City Council, prior to November 29, 1956, had amended Ordinance No. 3351 as desired for final passage, and he says that the minutes of the meeting of the City Council held on November 28, 1956, disclose Motion No. 7039 made by Councilman Welch as follows:

> "Inasmuch as there remains sufficient time for amendment and publication of Ordinance No. 3351 prior to final reading on December 31, 1956, and inasmuch as there exists no threat of incorporation, either now or in the foreseeable future in this District, I therefore move for the exclusion of FWSD No. 43.";

that the above motion and Motion No. 7042, making a minor amendment to annexation Ordinance No. 3351, both were

passed, and such facts, together with the recitation in said amended Ordinance No. 3351 as passed on November 28, 1956, disclosing that the next reading of the ordinance was to be the "fourth and final reading" established that the same had been amended as desired for final passage and that it was to be published.

4. That he denies the statement in Paragraph 12 of the Sears affidavit that the minutes of the meeting of the City Council held on December 31, 1956, do not record all of the events of that meeting and do not reflect the entire sequence of events, that at the very instant that the person acting as City Secretary had spoken the last word of the reading of the ordinance, the Mayor ordered "call the roll", that "at no time from the time the gavel went down at the conclusion of the meeting until the completion of the roll call was it possible for any person to have spoken without interrupting the proceedings which were going on before the City Council", and that prior to the announcement of the result of the vote or the rap of the gavel or any declaration by the presiding officer that the ordinance had been adopted, Mr. Thad Grundy stated he wanted to be heard; and the said George Neal says that the facts in regard to such meeting held on December 31, 1956, are correctly set forth in the minutes of the said meeting, that approximately an hour elapsed between the time that the meeting started and the time that a vote was taken on Ordinance No. 3351, that there were several occasions during such period when a person could have requested to be heard in connection with such ordinance and that Mr. Thad Grundy did not rise to his feet and request to be heard until after the Mayor stated that the ordinance had been adopted; that Mr. Robert L. Burns and Mr. Will Sears, attorneys for plaintiffs, did not appear at the public hearing with respect to Ordinance No. 3351 on November 19, 1956, that they did not request the right to be

heard at any one of the four meetings at which Ordinance No. 3351 was read nor did they at any time request in writing or orally of the Mayor, the City Secretary, or any member of the City Council the right to be heard with respect to such ordinance, and that both Sears and Burns were present at the Council meeting on December 31, 1956, at the time of the final reading of such ordinance and that as Sears had been City Attorney of Houston for a number of years prior to 1956, he was very familiar with the practice that any person desiring to be heard with respect to any matter should inform the City Secretary of such fact prior to the commencement of the meeting.

/s/ GEORGE NEAL

SWORN AND SUBSCRIBED To before me this 13th day of February, 1957.

/s/ HELEN D. McCREA
Notary Public in and for
Harris County, Texas

[NOTARIAL SEAL]

FILED February 14, 1957.

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## ANSWER OF DEFENDANTS TO PLAINTIFFS' REQUEST FOR ADMISSIONS

Filed Feb. 14, 1957

NOW COME the defendants, the City of Houston and Roy B. Oakes, in the above entitled and numbered cause and make the following answers to plaintiffs' request for admissions served on defendants on February 8, 1957:

1.

Defendants admit the facts set forth in paragraph 1 of said Request, except that defendants deny that such election would be necessary under the laws of the State of Texas.

2.

Defendants admit the facts set forth in paragraph 2 of said Request.

3.

Defendants admit the facts set forth in paragraph 3 of said Request, except that defendants deny that such certificate by the City Controller is necessary.

4.

Defendants admit the facts set forth in paragraph 4 of said Request, except they deny that any written certification by the City Controller is necessary.

5.

Defendants admit the facts set forth in paragraph 5 of said Request, except they state that both the City Council of Houston and the defendant Oakes had made an investigation of the outstanding indebtedness and liabilities of said Water Control and Improvement Districts and Fresh Water Supply Districts.

6.

Defendants admit the facts set forth in paragraph 6 of said Request, except they deny that Harris County Fresh Water Supply District No. 43 is located within the area annexed by Ordinance No. 3351.

7.

Defendants admit the facts set forth in paragraph 7 of said Request, except as follows:

Defendants deny that Harris County Fresh Water Supply District No. 43 was included within the annexed area; they

deny that Harris County Water Control and Improvement District No. 34 and Harris County Fresh Water Supply Districts Nos. 33 and 34 had issued and outstanding bonds on December 31, 1956, and they deny that the City of Houston was liable on December 31, 1956 for any of the bonds which had been issued by any of said Districts referred to in paragraph 6 of said Request.

8.

Referring to paragraph 8 of said Request, defendants admit that Harris County Water Control and Improvement Districts Nos. 11, 20, 22, 24, 26, 32, 33, 39, 44, 47, 49, and 59, and Harris County Fresh Water Supply Districts Nos. 23 and 26 had levied ad valorem taxes against all property located in said respective Districts but defendants deny such facts as to the other Water Control and Improvement Districts and Fresh Water Supply Districts listed in paragraph 6 of said Request, except no admission or denial is made with respect to Fresh Water Supply District No. 43 for the reason hereinabove set forth in paragraph 6.

9., 10., 11.

Defendants cannot admit or deny the facts set forth in paragraphs 9, 10 and 11 of said Request for the reason that there was no assumption of the debts, liabilities and obligations of any of said Water Control and Improvement Districts and Fresh Water Supply Districts until February 6, 1957, and at that time the City Council of the City of Houston adopted an ordinance assuming the debts and obligations of only nine of said Water Control and Improvement Districts and one Fresh Water Supply District and defendants have not obtained the books and records of the other Districts and have not audited same.

12.

Defendants deny that Ordinance No. 3384 fixed the boundaries of the City of Houston but admit that such Ordinance extended the limits of some of the boundaries and that it was submitted to the people under Article VIIb of the Charter of the City of Houston.

13.

Defendants deny the facts set forth in paragraph 13 of said Request, except they admit that Ordinance No. 3351 extended some of the limits of the City of Houston beyond certain of the limits fixed by said Ordinance No. 3384.

14.

Defendants admit the facts set forth in paragraph 14 of said Request.

/s/ Roy B. Oakes

ROY B. OAKES

City Controller of the
City of Houston

CITY OF HOUSTON

/s/ By Geo. D. Neal

GEORGE D. NEAL

City Attorney of the
City of Houston

THE STATE OF TEXAS }
COUNTY OF HARRIS }

BEFORE ME, the undersigned authority, on this day personally appeared ROY B. OAKES, who being by me first duly sworn upon oath deposes and says that the foregoing answers of the defendants to the plaintiffs' request for admissions are true and correct.

/s/ ROY B. OAKES

SUBSCRIBED AND SWORN TO before me on this 13th day of February, 1957.

/s/ BOBBY BRAMBLE
Notary Public in and for
Harris County, Texas

[NOTARIAL SEAL]

THE STATE OF TEXAS }
COUNTY OF HARRIS }

BEFORE ME, the undersigned authority, on this day personally appeared GEORGE D. NEAL, who being by me first duly sworn upon oath deposes and says that he is the City Attorney of the City of Houston and is authorized to make this affidavit; that the foregoing answers of the defendants to the plaintiffs' request for admissions are true and correct.

/s/ GEO D. NEAL

SUBSCRIBED AND SWORN TO before me on this 13th day of February, 1957.

/s/ HELEN D. MCCREA
Notary Public in and for
Harris County, Texas

[NOTARIAL SEAL]

FILED February 14, 1957

Filed Feb. 18, 1957

**PLAINTIFFS' MOTION FOR CONTINUANCE AND RESETTING OF HEARING ON MOTIONS FOR SUMMARY JUDGMENT — (ALSO SUBMITTED AS AFFIDAVIT ON SUCH MOTIONS)**

*To the Honorable Judge of Said Court:*

The Plaintiffs in the above styled and numbered cause respectfully move this Honorable Court to continue the hearing which has been set upon the Motions for Summary Judgment and to reset such hearing upon the 25th of February, 1957, or upon such further date as the Court may deem advisable, and for cause for this Motion, Plaintiffs would respectfully show this Honorable Court as follows:

I.

The hearing on Motions for Summary Judgment is presently set for February 18, 1957.

II.

In their Original Answer filed herein on January 17, 1957 and First Amended Original Answer filed herein on February 14, 1957, Defendants City of Houston and Roy Oakes, by Special Exceptions and affirmative pleas, assert that neither the Plaintiffs in the First Cause of Action nor those in the Second Cause of Action as each are stated in the Original Petition and First Amended Original Petition, may maintain this action because it is a collateral attack on an annexation ordinance of the City of Houston and that "such action can be maintained only in a direct suit in the nature of a quo warranto proceeding in which the State of Texas is a party." The Plaintiffs in the Second Cause of Action believe and will contend, as alleged in the First Amended Original Petition, that Section 1, Article IX of the Charter of the City of Houston specifically authorizes their suit and that their suit is a direct attack brought under

that statutory authority. The Plaintiffs in the First Cause of Action believe and will contend that their suit is a direct attack on the disputed annexation ordinance and that it may be maintained without resort to a proceeding in the nature of quo warranto. These latter Plaintiffs further believe and will contend, as alleged in the Original and First Amended Petitions herein, that Section 13, Article I of the Constitution of Texas will be violated if they are denied the right to maintain this suit.

III.

The Plaintiffs in both causes of action recognize, however, that the law provides them the right to petition the proper authorities to institute, on their relation, proceedings in the nature of quo warranto attacking said annexation ordinance. While Plaintiffs do not believe that this right of petition to an administrative officer is a substitute for a "remedy by due course of law," they heretofore conclude that, in order to pursue every remedy and to make every effort to effect a trial on the issues involved in this suit rather than one on a technical point, they would make application to the proper officers to bring an action in the nature of quo warranto. The County Attorney of Harris County and the Attorney General appeared to be the only officers authorized to bring such action.

IV.

On investigation Plaintiffs concluded that Joe Resweber, the present County Attorney of Harris County, is disqualified, legally and morally, from bringing a proceeding in the nature of quo warranto to attack the validity of such ordinance. Mr. Resweber served as member of the City Council of the City of Houston from January 1, 1956 until 12:00 p.m. December 31, 1956. While a member of the City Coun-

cil he attended the meetings at which the disputed ordinance was introduced, amended and passed on various readings and voted for the passage of said ordinance on each reading. Mr. Resweber's resignation from the Council became effective after his favorable vote for the ordinance on December 31, 1956, and on January 1, 1957 Mr. Resweber qualified and assumed the office of County Attorney of Harris County. On January 16, 1957, Mr. Resweber, as County Attorney, advised the Honorable Bob Casey, County Judge of Harris County, in a written opinion that he did not have authority to call elections in response to three petitions for incorporation presented to him on December 31, 1956 and one presented to him on January 2, 1957. This opinion is based on the assumption that the ordinance here disputed is valid. A copy of said opinion is attached hereto as Exhibit "A". In view of this opinion Plaintiffs concluded that Mr. Resweber would undertake to represent Judge Casey in a suit styled *E. E. Forbes,* et al v. *Bob Casey,* No. 480,270 in the District Court of Harris County, 113th Judicial District, a suit seeking a writ of mandamus to compel the County Judge to call an election on the question of incorporating the Village of Mykawa. This conclusion was verified on February 11, 1957 when Mr. Resweber filed an Original Answer in behalf of Judge Casey in said suit. This Answer asserts that "at all times material to this suit, the City of Houston, Harris County, Texas, has asserted and is asserting jurisdiction over the area described in Exhibit "A" to their petition by virtue of a certain annexation proceedings by that City; * * * ".

V.

In view of the disqualification of said County Attorney, the Plaintiffs, by their attorneys herein, on January 28, 1957, petitioned the Honorable Will Wilson, Attorney General of Texas to bring a proceeding in the nature of quo

warranto questioning the validity of said annexation ordinance and urged that such proceeding should be brought to eliminate the technical procedural defense asserted by Defendants and to allow the substantive issues to be determined on their merits. Judge Wilson advised that Mr. David Searls, an attorney of record for the Defendants, had previously contacted him requesting that he be given an opportunity to be heard in opposition to any application petitioning Judge Wilson to question the Houston ordinance by quo warranto. Judge Wilson requested Plaintiffs to present the specific grounds relied on to attack the ordinance and advised that they would be furnished to the City of Houston in order that each side of the controversy could be presented to him. Plaintiffs presented their points of contention to Judge Wilson and on February 1, 1957 the Attorney General transmitted these points to the City of Houston and its attorneys. A copy of this letter is attached hereto as Exhibit "B". Subsequent thereto both Plaintiffs and Defendants submitted briefs to the Attorney General, the Plaintiffs in support of their application and the Defendants opposing the application. In regard to the position of the Defendants, on February 8, 1957 Mr. J. W. Wheeler, Assistant Attorney General of Texas, advised Plaintiffs that Mr. David Searls had contended to him that Plaintiffs could maintain suit on most of the grounds asserted without quo warranto being brought and that Mr. Searls would so advise this Honorable Court.

VI.

Although Plaintiffs' application has been processed expeditiously by the Attorney General, Judge Wilson advised Plaintiffs by telephone on February 16, 1957, that no conclusion had been reached and that he and his staff were still considering Plaintiffs' request. Judge Wilson further advised that his office would issue its decision on whether

to bring the requested action by the latter part of the week beginning February 17, 1957. A decision by the Attorney General to bring a proceeding in the nature of quo warranto on relation of these Plaintiffs will eliminate the necessity of a hearing on the principal issue presented by Defendants' Motion for Summary Judgment and will nullify the results of any hearing held thereon. Inasmuch as a decision will be made in a few days, the hearing on the Motion for Summary Judgment should be continued and reset at an early date. This continuance will save the time of the Court and the parties and will not unduly delay this suit.

VI.

This continuance is not sought for delay but that justice may be done.

(Signature of Counsel)

THE STATE OF TEXAS }
COUNTY OF HARRIS }

BEFORE ME, the undersigned authority, on this day personally appeared Robert L. Burns, attorney of record for the Plaintiffs in the above styled and numbered cause, who being by me duly sworn upon his oath deposes and says that he has personal knowledge of the facts stated in the foregoing Motion and Affidavit and that such facts are true and correct; and that he presents this sworn statement, not only as a motion for continuance, but as an affidavit for Plaintiffs in connection with the motions for summary judgment in said case.

/s/ ROBERT L. BURNS

SUBSCRIBED AND SWORN TO before me this 18th day of February, 1957.

/s/ DOROTHY W. WILLIS
Notary Public in and for
Harris County, Texas

[SEAL]

• • • • •

**EXHIBIT "A"**

Office of

COUNTY ATTORNEY

Harris County Courthouse

Houston 2, Texas

January 16, 1957

#1006

HONORABLE BOB CASEY
County Judge
Building

*Re:* **Has the County Judge the Authority to Call Elections for the Purpose of Incorporating Four (4) Different Towns or Villages Located in the Area Recently Annexed by the City of Houston.**

Dear Judge:

This is in reply to yours of January 4, 1957, wherein you state that you have received four petitions requesting an election to be called for the purpose of incorporating said cities or villages, each covering separate territories, all territories being within the new area recently annexed by the City of Houston.

You request the opinion of this Department on the following questions:

A. Am I authorized to call the elections petitioned for, and if not,

B. Should an order be entered stating the reasons for not calling such election.

From the facts as we view them, to-wit: The City of Houston had its first reading for annexation on October 31, 1956; the second reading on November 21, 1956; the third reading on December 31, 1956, and the final order of annexation was entered December 31, 1956. Three of the petitions for incorporation of towns or villages were presented to you on December 31, 1956; the fourth petition was presented to you on January 2, 1957. All petitions cover territory already annexed or in the process of being annexed.

Assuming the above facts to be correct, we answer your Question A in the negative. It is our opinion and you are so advised that the rule in this State is that whoever first commences legal proceeding asserting authority over the territory in question thereby acquired jurisdiction over same, and this jurisdiction cannot be defeated thereafter by the adverse parties subsequently attempting to exercise jurisdiction. In view of this rule, which has been cited and followed in many Supreme Court cases (a few of which are cited below), the County Judge is without authority to defeat the jurisdiction already acquired by the party who first instigated legal proceedings for annexation by ordering an election. Even if an election has been held, or ordered to be held, it would not defeat the jurisdiction first acquired, and such election would be void.

In the case of *Beyer et al* v. *Templeton et al,* 212 S.W. 2d 134 (Sup. Ct. 1948), the Court, among other things, held:

> "That a Home Rule City by passing on its first reading of Ordinance annexing contiguous territory embraced in the City, acquired jurisdiction for purpose of annexation of such territory and County Judge had no authority to defeat such jurisdiction by thereafter calling an election on question of incorporating such territory as a city."

For other authorities on the subject matter, see the following cases:

*State ex rel. Binz* v. *City of San Antonio,* 147 S.W. 2d 551 (Civ. App. San Antonio, 1941), writ refused.

*City of Terrell* v. *City of San Antonio,* 216 S.W. 2d 657 (Civ. App. San Antonio, 1948), E.R.

*Westwood Development Co.* v. *City of Abilene,* 273 S.W. 2d 652 (Civ. App. Eastland, 1954), N.R.E.

*State* v. *Town of Clyde,* 18 S.W. 2d 202 (Civ. App. Eastland, 1929), writ refused. The Court held that: "The County Judge's duty to order town incorporation election was judicial and not reversible by Courts for error, in absence of fraud."

*City of Houston* v. *City of West University,* 176 S.W. 2d 428 (Sup. Ct. 1944).

Answering your Question B, we are of the opinion that in the absence of any expressed or implied authority to do so, you are clothed with the discretion to enter an order giving your reasons for calling or not calling the requested election.

Yours very truly,

JOE RESWEBER
County Attorney

By W. K. RICHARDSON
Assistant County Attorney

JR:WKR:1p

Approved:

.....
County Attorney

• • • • •

## EXHIBIT "B"

THE ATTORNEY GENERAL OF TEXAS

Austin 11, Texas

WILL WILSON
*Attorney General*

February 1, 1957

City of Houston
City Hall
Houston, Texas

*Attention:* Legal Department

Gentlemen:

Messrs. W. Sears McGee, Will Sears, and Robert L. Burns, attorneys of your city, represent clients who have requested this office to bring a quo warranto suit attacking a recent annexation ordinance propounded by your City Council. At our request they have submitted the specific grounds upon which they assert the ordinance to be invalid.

It is the policy of this office to meet our full obligation imposed upon us by law to inquire into municipal action by quo warranto. However, we do not wish to needlessly impair and delay the activities of city government. Therefore, we, as a matter of policy, will bring a quo warranto suit only when we are convinced that there is a justiciable issue as to the validity of the ordinance. If there is a justiciable issue, the complainants are entitled to their day in court.

A second requirement that we will make before bringing such a suit is that the local District or County Attorney has fully considered the matter and concluded not to bring a suit.

We have asked the complainants to submit a letter stating their grounds of attack with the understanding that this

would be submitted to you before we decide whether or not to bring such a suit. We will be glad to hear and consider your reply to the specific grounds alleged by the complainants if you care to make one.

This annexation ordinance is now under attack in a proceeding in Harris County.

This matter is set for a hearing soon and we must make our decision before the date of that hearing, so we urge that you give it your prompt attention. If you decide you do not care to reply to the charges, we would appreciate your letting us know as soon as possible.

The specific grounds of attack are as follows:

A.

Ordinance No. 3351 is void because:

I.

Section 2b, Article I of the Charter of the City of Houston (authorizing annexation of territory by ordinance) was repealed by Article 1265 R.S. 1925, and the Charter contains no other authorization for annexation of territory by an unpetitioned ordinance.

II.

The Ordinance Committee of the Council of the City of Houston did not hold a meeting prior to introduction of the ordinance and did not at any time give notice of the time and place it would consider the ordinance or afford an opportunity to citizens to be heard at a public meeting of the Committee, all in violation of Section 2b, Article I and Section 3, Article VII of the Charter.

III.

The subject of the ordinance is not clearly expressed in the title as required by Section 3 (4th grammatical

paragraph), Article VII of the Charter, and the title is misleading in that the title only enumerates certain specified areas being annexed and the body of the ordinance describes such enumerated areas and in addition thereto describes by metes and bounds and annexes a large area not referred to in the caption.

IV.

The provisions of Section 2 of the ordinance (that all of the area described in Section 1 which is not *now* (date of final passage) within the City of Houston and not *now* within the limits of any other city, town, or village, is annexed) and the provision of Section 4 (that if the general description provided in Sections 1 and 2 includes any land not within the jurisdiction of the City of Houston to annex, such lands are thereby excluded and excepted from the area to be annexed) rendered the description of the area to be annexed wholly uncertain while the Ordinance was pending and also insufficient to assert jurisdiction over any of the described area by the introduction and consideration of the ordinance because:

1. No citizen could read the ordinance and know what lands would be unincorporated at final passage of the ordinance, and

2. Sections 2 and 4, excluding areas incorporated at final passage and applying only to areas within jurisdiction of city at final passage, expressly negative the ordinance being an assertion of jurisdiction over the described area and recognizes the right of areas therein to petition for incorporation.

V.

The ordinance was not published in a daily newspaper published in the City of Houston one time after it had been amended as desired by the Council for final passage as required by Section 2b, Article I of the

Charter and was finally passed without publication within less than 30 days after it had been amended as desired for final passage in violation of such Charter provision.

VI.

At no meeting at which the ordinance was considered by the Council were citizens afforded an opportunity to be heard on the ordinance as required by Section 3 (2nd grammatical paragraph), Article VII, and at the so-called "adjourned regular meeting" on December 21, 1956, at which the ordinance was finally passed, the Council acting through its presiding officer arbitrarily denied citizens present the right to be heard on the ordinance.

VII.

If the publications of the ordinance on November 23, 1956, and November 29, 1956, were each made after the ordinance published had been amended as desired by the Council for final passage and thus publications authorized by the Council, the ordinance read and approved on November 28, 1956, was not an amendment of Ordinance 3351 introduced on October 31, 1956, but was a new ordinance which was introduced and passed on first reading on November 28, published on November 29, and finally passed on December 31, without the Ordinance Committee (as required by Section 2b, Article I, and Section 3, Article VII) reporting on the ordinance, holding a public meeting on the ordinance or giving notice that the ordinance was to be considered or introduced.

VIII.

The ordinance attempts to amend the boundaries of the City of Houston as fixed by a certain referendum ordinance adopted by the qualified voters of the City on December 30, 1949, in violation of Section 9, Article VIIb, of the charter prohibiting amendment of a referendum ordinance except by election.

IX.

By force of Article 1182c-1, V.A.C.S., adoption of the ordinance assumes the bonded indebtedness of numerous water districts and in violation of Section 19a, Article II of the Charter the ordinance was adopted without the Controller having certified there were funds in the treasury available to pay such obligations or to be received in the treasury prior to maturity of the obligations.

B.

Assumption of Debts of Water Districts by City of Houston is void because:

I.

Assumption of the debts of the Water Districts by the City of Houston has not been approved by the property tax-paying voters of the City of Houston as required by Section 3 and Section 3a of Article VI, Constitution of Texas.

In order that all parties may be fully informed of the status of this proceeding, we are taking the liberty of sending a copy of this letter to your County Attorney (who we understand has jurisdiction of these matters in Harris County), to Mr. David Searls, who has informed us that he is of counsel for the City in this proceeding, and to Messrs. McGee, Sears and Burns, counsel for the complainants.

Very truly yours,

/s/ J. W. WHEELER
J. W. Wheeler
Assistant Attorney General

cc: MR. BURKE HOLMAN
County Attorney
Courthouse
Houston, Texas

MR. DAVID SEARLS
Attorney at Law
Esperson Building
Houston, Texas
MR. W. SEARS MCGEE
Attorney at Law
Esperson Building
Houston, Texas
MR. WILL SEARS
MR. ROBERT L. BURNS
Attorneys at Law
South Coast Building
Houston, Texas

* * * * *

FILED February 18, 1957
Signed Feb. 18, 1957

2/18/57 ORDER OF THE COURT. The foregoing motion was timely presented and overruled to which Relators except.

WILMER B. HUNT
Judge

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## PLAINTIFFS' SUPPLEMENTAL AFFIDAVIT BY WILL SEARS

Filed Feb. 18, 1957

BEFORE ME, the undersigned authority, a Notary Public in and for the County of Harris and the State of Texas, on this day personally appeared WILL SEARS, who being by me duly sworn upon his oath deposes and says:

My name is WILL SEARS. I am a citizen of Houston, Harris County, Texas, and I am one of the attorneys for the Plaintiff in this cause. I know of my own knowledge that the facts stated herein are true and correct and I make this affidavit on my personal knowledge.

1. The statement made in the so-called "Motion to Supplement Affidavit" filed by GEORGE NEAL in Paragraph 1 of

Exhibit "1" attached thereto, that Motion 6840 is a motion setting a public hearing on November 19, 1956 "on Ordinance 3351" is incorrect. There is no ordinance, resolution, motion, minute entry or entry in any other public record in connection with this Motion that shows or intimates, directly or indirectly, that the so-called public hearing was on "Ordinance No. 3351". The affiant says that the very minutes of the City Council themselves show that Ordinance No. 3351 was not before the City Council for consideration and action at such time. Such minutes reflect that seven members of the Council assembled on a Monday morning and listened to eight people and that there is no minute entry, entry in the ordinance book, ordinance, resolution, motion or any other public record showing that the City Council of the City of Houston there considered Ordinance No. 3351 or passed Ordinance No. 3351 on any reading or took any action whatsoever on Ordinance No. 3351 on November 19, 1956, or even had the ordinance before them.

2. With respect to the legal conclusions pled in Paragraph 3 of the said affidavit, this affiant says that, as shown by Exhibit A and C attached to his original affidavit, the first draft of Ordinance 3351 allegedly passed on first reading on October 31, 1956, and the second draft allegedly passed on second reading on November 21, 1956, both contain an entry at the end of the ordinance reading "passed third *and final* reading this.....day of....., 1956." This entire line is omitted from the so-called publication of this so-called ordinance as it appeared in The Houston Chronicle on November 23, 1956. Affiant says that the publication of the so-called ordinance "on third reading as further amended" which took place on November 28, 1956 in said Houston Chronicle does not contain the words "passed fourth and final" reading but simply reads "passed fourth reading this.....day of December, 1956."

3. The allegations contained in Paragraph 4 of the said affidavit that "approximately an hour elapsed between the time that the meeting started and the time that a vote was taken on Ordinance No. 3351, that there were several occasions during such period when a person could have requested to be heard in connection with such ordinance and that MR. THAD GRUNDY did not rise to his feet and request to be heard until after the Mayor stated that the ordinance had been adopted" are incorrect. The so-called motion to suspend the rules was made at 9:30 a.m. and the entire time of the Council was taken in reading the motion and receiving a formal vote on same until shortly before 9:33 a.m. at which time immediately following the vote upon the motion to suspend the rules the Mayor ordered the reading of so-called Ordinance No. 3351. The person acting as City Secretary commenced the reading of said ordinance at 9:33 a.m. on December 31, 1956 and continued reading the so-called ordinance until 10:08 a.m. at which time the reading was completed and the Mayor immediately ordered the person acting as City Secretary to call the roll of the Councilmen for a vote upon the ordinance. The roll call proceeded immediately. There was no occasion during such period when any person in the audience could have requested the Council to be heard in connection with the ordinance without interrupting the reading of the motion to suspend the rules, the vote upon the motion to suspend the rules, the reading of the ordinance and the vote of the ordinance. No instant of time was allowed to lapse by the City Council in the rapid progress of these events. The affiant particularly denies that the Mayor stated that the ordinance had been adopted before MR. THAD GRUNDY rose to his feet. Affiant says that MR. GRUNDY was on his feet demanding to be heard as soon as the last Councilman had voted and before anything was said by the Mayor and before the Mayor signed

his approval upon the ordinance. Affiant further states that the rules concerning reconsideration of a vote were suspended at the time and that any member of the Council could have made a motion to permit MR. GRUNDY and the other members of the public to be heard but no one did so. Furthermore, the rules being suspended, MR. GRUNDY and the other members of the public could have been heard, notwithstanding the vote and in anticipation of a motion to reconsider, but no member of the Council moved that this be done. On the contrary, the affiant says that no person in the Council chamber, that is, neither the Mayor, nor any member of the Council, nor the person acting as City Secretary, nor anyone else ever made any announcement to the public that anyone wishing to speak at that meeting would be afforded a chance to be heard. Affiant says that he was Assistant City Attorney of the City of Houston from April 16, 1938 until April 1, 1947; that he was First Assistant City Attorney of the City of Houston from April 1, 1947 to November 1, 1948; and that he was City Attorney of the City of Houston from November 1, 1948 to January 1, 1957; that when the City Council is preparing to hear the public, it is customary for the City Secretary to arrive in the Council chamber prior to the Council meeting and ask all those desiring to be heard to come forward and give their names; that he looked for MRS. MARGARET WESTERMAN, City Secretary of the City of Houston on December 31, 1956, but she did not enter the Council chamber and no one made any such announcement. The meeting was called to order and the proceedings commenced without MRS. WESTERMAN arriving and with some other person, not known to the affiant, acting as City Secretary. Affiant knows MRS. WESTERMAN well and knows that she did not enter the Council chamber at any time on December 31, 1956. In all of the years that the affiant served with the Legal Department of

the City of Houston he has never before observed any citizen so completely denied the right to be heard in connection with the consideration and passage of an ordinance such as occurred upon December 31, 1956. As City Attorney, he has on a number of occasions warned persons in the audience against interrupting the Council under penalty of prosecution for breach of the peace in a public assembly, and at no time, on December 31, 1956 was it possible for the affiant or MR. ROBERT L. BURNS to speak to the Council and be heard without interrupting the Council meeting. However, after Councilman Kesseler spoke, following MR. GRUNDY'S protest against not being heard, affiant was preparing to try to add his protest to that of MR. GRUNDY'S, when he was prevented by the Mayor's abrupt announcement that the meeting was adjourned. Affiant further states that neither he nor MR. ROBERT L. BURNS were retained to represent the Plaintiffs in this cause until December 27, 1956, and that the only occasion thereafter when the City Council of the City of Houston went through the motions of considering so-called Ordinance No. 3351 in public meeting was on December 31, 1956 at which time the affiant and MR. ROBERT L. BURNS were denied the right to be heard on behalf of their clients and were denied the right to be heard as citizens of the City of Houston.

WILL SEARS

SUBSCRIBED AND SWORN TO BEFORE ME this 18th day of February, 1957.

DOROTHY W. WILLIS
Notary Public in and for
Harris County, Texas

[Notary Seal]

FILED February 18, 1957.

Filed Feb. 18, 1957.

**(DEFENDANTS') AFFIDAVIT OF ANNA RUSSELL IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.**

EXCERPTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS.

Council Chamber, City Hall, Wednesday, November 14, 1956

A regular meeting of the City Council was held at 10:30 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette, and Mr. George D. Neal, City Attorney, and Mr. F. F. Beadle, First Assistant City Attorney, present. Councilman Resweber out of the City.

Mr. S. W. Hales, 2203 South Wayside Drive, stated he owned a small subdivision that intersects the Gulf Freeway and that he understood the property would be annexed to the City of Houston and requested to be advised what the City intended to do with reference to his water well and the property on which the well is located as well as the improvement of streets.

Mr. R. C. Platzer, 7538 Almeda-Genoa Road, stated he appeared representing a group protesting annexation of their area to the City of Houston and read a letter to the City Council, which he did not file with the Council. Upon question of Councilman Welch, Mr. Platzer said the area in question was in the vicinity of Mykawa Road, two miles south of the Airport. The protest was received and filed.

Mr. E. E. Forbes, Route 1, Box 37[illegible] also discussed the annexation of the same area and stated the people were

100 per cent against the annexation. The protest was received and filed.

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Council Chamber, City Hall, Wednesday, November 28, 1956

A regular meeting of the City Council was held at 10:30 a.m. on this date with Mayor Holcombe presiding and with Councilman Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette, and Mr. George D. Neal, City Attorney, and Mr. F. F. Beadle, First Assistant City Attorney, present.

Mr. J. S. Gordan, 304 Melrose Building, stated he lived in Eastridge Terrace, Water District No. 62, and he and the residents of the District merely wanted the City Council to have the correct information and advised Council that the District had 49 families, population of 164 persons, with 15 houses under construction.

Mrs. Mary Mowery, Route 3, Box 475, stated she was one of a group of people on Almeda Road being taken into the City, that she lived on a farm and part of the property was used for pasture land for which she received $2.00 per acre and that this amount would not pay the State, County and School taxes and further that when the property was annexed they would be under restrictions of the City's laws and to take the property into the City was unreasonable.

Mr. Joseph C. Johnson, 629 Texas National Bank Building, stated he represented 10 people in the Almeda Road and Allen-Genoa Road District and wanted to impress on Council the serious affect this annexation ordinance would have on this community. The area and community was a farming area and the people owned approximately 1,500 acres not subdivided and not developed. Mr. Johnson asked Council

to look at the 1,500 acres and in all reasonableness it should not be a part of the annexation ordinance.

Mr. Aaron Goldfarb, 629 Texas National Bank Building, stated he represented Mr. Wise, who was in the business of breeding horses for the purpose of racing them throughout the nation and if the property was annexed, he would have to go elsewhere to breed and train the horses.

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Council Chamber, City Hall, Wednesday, December 5, 1956

A regular meeting of the City Council was held at 10:30 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette, and Mr. George D. Neal, City Attorney, and Mr. F. F. Beadle, First Assistant City Attorney, present.

Mr. Oscar Schmidt, 3422 North Shepherd Drive, discussed the proposed annexation and stated that the City was annexing too much additional territory and should furnish services to the people in the City before taking in additional territory. The request was received and filed.

Mr. T. A. Murff, P. O. Box 218, Golden Acres, Texas, stated he was speaking in behalf of Water District No. 25 and the proposed annexation to take part of the district into the City. Mr. Murff requested that the City move the annexation line south so as not to divide the district. Upon question of Councilman Reeves, he stated if the annexation line was moved south the entire district would be left out of the City limits. The Secretary was instructed to advise Mr. Murff that nothing could be eliminated from the annexation ordinance at this time.

STATE OF TEXAS }
COUNTY OF HARRIS }

BEFORE ME, the undersigned authority, on this day personally appeared ANNA RUSSELL, who, after being by me duly sworn, upon her oath deposes and says:

"My name is Anna Russell and I am the statistician for the City Secretary of the City of Houston, Texas. Among my duties I have under my supervision and care the official minutes of the City Council of the City of Houston. I have examined the official minutes of the City Council for all of the meetings from October 31, 1956, to December 31, 1956, to determine at what meetings, if any, of the City Council in that period of time that any person appeared before the City Council to discuss the proposed annexation of territory by the City Council, and from my examination I find that, in addition to the meeting of November 19, 1956, at the meeting of November 14, the meeting of November 28, and the meeting of December 5, 1956, there appeared certain persons as shown in the above and foregoing excerpts from the minutes of the City Council at the meetings indicated."

/s/ ANNA RUSSELL
Anna Russell

SUBSCRIBED AND SWORN to before me this 18th day of February, A.D. 1956.

/s/ MILNER MAES
Milner Maes
Notary Public in and for Harris County, Texas

[NOTARIAL SEAL]

FILED February 18, 1957

Filed Feb. 19, 1957

## PLAINTIFFS' SECOND SUPPLEMENTAL AFFIDAVIT BY WILL SEARS

BEFORE ME, the undersigned authority, a Notary Public in and for the County of Harris and the State of Texas, on this day personally appeard Will Sears, who being by me duly sworn upon his oath deposes and says:

My name is Will Sears. I am a citizen of Houston, Harris County, Texas, and I am one of the attorneys for the Plaintiff in this cause. I know of my own knowledge that the facts stated herein are true and correct and I make this affidavit on my personal knowledge.

I have examined the affidavit of Anna Russell, statistician in the City Secretary's office, which is attached to the certified copy of "excerpts" of the Council minutes, and which was filed in this cause on February 18, 1957.

This exhibit does not show or purport to show all of the minutes for the Council meetings held on November 14, 1956, November 28, 1956 and December 5, 1956. There is no entry in the minutes showing any reading by the City Council on alleged Ordinance No. 3351 on November 14, 1956 or December 5, 1956 and there is no minute entry, ordinance, resolution or motion showing that the Council had Ordinance No. 3351 before it for any type of consideration or action whatsoever on those days. Councilman Kesseler made a motion on November 14, 1956 for a "public hearing" to be held on November 19, 1956, "for the purpose of hearing those wishing to be heard on the annexation of additional territory to the City of Houston." This motion was *not*

made at the regular meeting open to the public at 10:30 A.M. on November 14, 1956. It was made at an "adjourned" regular meeting held in the Mayor's private dining room at 9:00 A.M. earlier that day before the 10:30 A.M. public meeting. As the record shows, the motion was not approved until November 16, 1956.

The "excerpt" of the minutes for November 28, 1956 is also fragmentary and incomplete. The minutes for the regular meeting of that date show that alleged Ordinance No. 3351 was not taken up for consideration until *after* the persons addressing the Council on November 28, 1956 had spoken. The speakers did not speak in the order in which the excerpt would lead the reader to believe. The meeting opened with a public hearing on benefits in connection with the paving of Norfolk Drive. There followed another paving hearing, then with a public hearing on a fire hazard and a petition for a peddling permit. Mor Gordon then spoke, followed by a Mr. Paul Strong speaking on another subject. The speakers Mowry, Johnson and Goldfarb followed. Following are numerous other items of business in the nature of motions and ordinances before the City Council laid out Ordinance No. 3351 for discussion by adopting Motion No. 7038, as shown by Exhibit F attached to the Plaintiffs' Original Affidavit and First Amended Original Petition. At the time that the speakers were addressing the Council on November 28, 1956, alleged Ordinance No. 3351 had appeared in The Houston Chronicle as it was passed on second reading as amended and there is no record anywhere in the records of the City of Houston that the City Council had ever ordered that any public notice be given that the Council was going to consider this ordinance on a third *but not final* reading after this so-called publication, and further amend it, or take any other action with

respect to it. The page of the minutes numbered 51 which appears in the said Exhibit F is the only record of the City of Houston showing where any citizen was ever given an opportunity to be heard by the City Council with respect to this so-called Ordinance No. 3351 at any time while it was actually being considered by the City Council.

/s/ WILL SEARS

SUBSCRIBED AND SWORN TO BEFORE ME this 19th day of February, 1957.

/s/ DOROTHY W. WILLIS

Notary Public in and for
Harris County, Texas.

[NOTARIAL SEAL]

FILED February 19, 1957.

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Filed Feb. 21, 1957

**(DEFENDANTS')**

**SECOND SUPPLEMENTAL AFFIDAVIT OF GEORGE NEAL IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

BEFORE ME, the undersigned authority, on this day personally appeared GEORGE NEAL, who being by me first duly sworn upon oath deposes and says:

That he is the City Attorney of the City of Houston and was City Attorney during the calendar year of 1956 and that he has personal knowledge of the following facts set out in this affidavit through attendance at meetings of the City Council of Houston, by examining records of the City

Secretary of the City of Houston and making a personal investigation to determine the nature of the services being furnished by the City of Houston in the annexed area involved in this cause:

1. The exhibit attached hereto as Exhibit "A" is a true and correct copy of annexation Ordinance No. 2234 passed by the City Council of the City of Houston on first reading on February 1, 1956.

2. The exhibit attached hereto as Exhibit "B" is a true and correct copy of the amended annexation Ordinance No. 2234 passed by the City Council of the City of Houston on second reading on February 15, 1956.

3. The exhibits attached hereto as Exhibits "C-1", "C-2", "C-3", "C-3-a", "C-4" and "C-5" are true and correct copies of certain excerpts from the minutes of the City Council of the City of Houston relating to the proposed annexation of area to the City of Houston.

SUBSCRIBED AND SWORN to before me this 21st day of February, 1957.

/s/ GEORGE NEAL

/s/ PAULA COE
PAULA COE
Notary Public, Harris County
Texas

[Notarial Seal]

Notary Public, in and for Harris County, Texas
My Commission Expires June 1, 1957.

* * * * *

**EXHIBIT "A"**

Legal Department File No. 18583
BOOK NO. DDD PAGE NO. 339
2234

MAYOR'S OFFICE
HOUSTON, TEXAS
February 1, 1956

Honorable City Council of the City of Houston
City Hall

Gentlemen:

I submit to you herewith an ordinance entitled:

"AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS: ANNEXING TO THE CITY OF HOUSTON ALL OF THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; PROVIDING THAT SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVING CLAUSE; AND PROVIDING THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC., OF SAID CITY."

Very truly yours,

/s/ O. F. Holcombe
Mayor of the City of Houston

The undersigned, the Ordinance Committee of the City Council of the City of Houston, hereby unanimously report favorably upon the ordinance above referred to and recommend its passage.

GEORGE W. KESSELER
LEE MCLEMORE
GEORGE MARQUETTE, JR.
Ordinance Committee of the City Council of the City of Houston

AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; ANNEXING TO THE CITY OF HOUSTON ALL OF THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; PROVIDING THAT SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVING CLAUSE; AND PROVIDING THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC., OF SAID CITY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1: That the boundaries and limits of the City of Houston are hereby extended so as to embrace and include all of the lands and area lying within the following

described boundaries and comprised within the following limits (save and except only such of the land lying within such boundaries and limits as is described in the exceptions set forth or stated in Section 2 of this ordinance), to-wit:

BEGINNING at a point where the northerly right-of-way line of Westheimer Road intersects the easterly right-of-way line of Hayes Road;

THENCE northerly along the easterly line of Hayes Road extended, to the center line of Buffalo Bayou;

THENCE westerly along the center line of Buffalo Bayou, to the easterly line of the Dairy-Ashford Road;

THENCE northerly along the easterly line of the Dairy-Ashford Road, to the point where said road makes a turn toward the east;

THENCE easterly along the southerly line of the said Dairy-Ashford Road, to the point where said road again turns to the north;

THENCE northerly along the easterly line of the said Dairy-Ashford Road, to the southerly line of U. S. Highway No. 90 (being often referred to as the Katy Road);

THENCE easterly along the southerly line of U. S. Highway No. 90, to the easterly line of the Britt Moore Road extended;

THENCE northerly along the easterly line of Britt Moore Road and the said Britt Moore Road extended, to the southerly line of Clay Road;

THENCE easterly along the southerly line of Clay Road, to the easterly line of Gessner Road;

THENCE northerly along the easterly line of Gessner Road and Gessner Road extended, to the northeasterly line of U. S. Highway No. 290 (often referred to as the Hempstead Highway);

THENCE southeasterly along the northeasterly line of the U. S. Highway No. 290, to the easterly line of the Fairbanks-North Houston Road;

THENCE northerly along the easterly line of the Fairbanks-North Houston Road, to the southerly line of the West Little York Road;

THENCE easterly along the southerly lines of the West Little York Road and Little York Road, to the westerly line of U. S. Highway No. 59;

THENCE southwesterly and southerly along the westerly line of U. S. Highway No. 59, to the center line of Halls Bayou;

THENCE easterly along the center line of Halls Bayou, to the westerly line of Fontaine Place Addition, Section 2;

THENCE northerly along the westerly line of Fontaine Place Addition, Sections 2 and 1, to the northerly line and northwesterly corner of Fontaine Place Addition, Section 1;

THENCE easterly along the northerly line of Fontaine Place Addition, Sections 1, 3, and 4, to the northeasterly corner of the said Fontaine Place addition Section 4;

THENCE easterly in a direct line, to the northwesterly corner of the Scenic Woods Addition;

THENCE easterly along the northerly line of the said Scenic Woods Addition to a point where such line intersects or joins the westerly boundary line of the most northerly portion of said Scenic Woods Addition (said point being the northeasterly corner of Lot No. 2 in Block No. 26 of the said Addition);

THENCE northerly along the westerly boundary line of the most northerly portion of the Scenic Woods Addition, to the most northerly northwesterly corner of the said Scenic Woods Addition;

THENCE easterly along the most northerly north line of the Scenic Woods Addition, to its northeasterly corner;

THENCE southerly along the easterly line of the Scenic Woods Addition and along said line extended across the right-of-way of the B.S.L. & W.R.R. (sometimes now commonly referred to as the Missouri Pacific Railroad), to the southeasterly right-of-way line of the said B.S.L. & W.R.R.;

THENCE northeasterly along the southeasterly right-of-way line of the said B.S.L. & W.R.R., to the southerly line of the Mount Houston Road;

THENCE easterly along the southerly line of the Mount Houston Road, to the center line of Greens Bayou;

THENCE southerly along the center line of Greens Bayou, to the southerly line of the Wallisville Road;

THENCE easterly along the southerly line of Wallisville Road, to the westerly line of the Uvalde Road;

THENCE southerly along the westerly line of the Uvalde Road and along said line extended, to the northerly right-of-way line of the Houston-North Shore Railroad;

THENCE westerly along the northerly right-of-way line of the Houston North Shore Railroad, to the easterly line of the Woodland Acres Addition;

THENCE southerly along the easterly line of the Woodland Acres Addition, to the southeast corner of said Addition;

THENCE westerly and northwesterly along the southerly and southwesterly line of Woodland Acres Addition, to the southeasterly line of Woodland Acres Addition Annex No. 2;

THENCE southwesterly and westerly along the southeasterly and southerly lines of Woodland Acres Addition Annex No. 2, to a point (which is in the present

City Limit Line of the City of Houston), said point being 800′ east of the easterly line of Federal Road;

THENCE southerly parallel with and 800′ from the easterly line of Federal Road, to a point located 2500′ from the center line of the Houston Ship Channel said distance of 2500′ being measured northerly from and at right angles to the center line of the Houston Ship Channel;

THENCE westerly parellel with and 2500′ from the center line of the Houston Ship Channel, to a point on the southerly line of Clinton Road;

THENCE westerly along the southerly line of Clinton Road, to the easterly line of the John Brown Survey and the westerly line of the Ezekiel Thomas survey;

THENCE southerly along the easterly line of the John Brown survey, to the southerly water's edge of Buffalo Bayou and the Houston Ship Channel;

THENCE in a southeasterly direction along the south Water's Edge of Buffalo Bayou and the Houston Ship Channel, to a point located 300 feet from and measured southeasterly at right angles to the center of Sims Bayou, being on the south Water's Edge of Buffalo Bayou Old Channel on the southerly side of Clinton Island;

THENCE in a southwesterly direction parallel with and 300 feet from the center of Sims Bayou, to a point 2500 feet from, measured southerly from and at right angles, to the centerline of the Houston Ship Channel;

THENCE in an easterly direction parallel with and 2500 feet from the centerline of the Houston Ship Channel, to its point of intersection with the easterly line of Lot 1 and the westerly line of Lot 3 of Outlot 35, Pasadena Townsite;

THENCE southerly along the westerly line of Lot 3 and the easterly line of Lots 1 and 2 of Outlot 35, Pasadena Townsite, and continuing across the Public Belt

Railroad right-of-way, to the northeasterly corner of Lot 12, Outlot 35, Pasadena Townsite, the same being in the westerly right-of-way line of Houston Lighting and Power Company Road;

THENCE southerly along the westerly right-of-way line of the Houston Lighting and Power Company Road, to the northerly right-of-way line of the Houston-La Porte Road, State Highway No. 225;

THENCE westerly along the northerly right-of-way line of the Houston-La Porte Road, State Highway No. 225, to the westerly line of Vince Street extended across Houston-La Porte Road State Highway No. 225;

THENCE southerly across the Houston-La Porte Road, State Highway No. 225, and along the westerly right-of-way line of Vince Street, to the northerly right-of-way line of Southmore Avenue extended;

THENCE westerly along the northerly line of Southmore Avenue extended, to its point of intersection with the westerly right-of-way line of the Allen-Genoa Road;

THENCE southeasterly along the southwesterly right-of-way line of the Allen-Genoa Road, to its intersection with the northerly right-of-way line of Queens Road;

THENCE westerly along the northerly right-of-way line of Queens Road, to a point 60 feet northerly of the northwesterly corner of Block 8 and the northeasterly corner of Block 9 of the South Houston Gardens No. 1 Subdivision;

THENCE southerly across Queens Road, to the northwesterly corner of Lot 8 and the northeasterly corner of Lot 9 of South Houston Gardens No. 1 Subdivision;

THENCE along the westerly lines of Lots 8, 15, 30, 37, 52, 59, and 74 of South Houston Gardens No. 1 Subdivision, to a point, being the southwesterly corner of Lot 74 and in the northerly right-of-way line of Kolb Road;

THENCE westerly along the northerly right-of-way line of Kolb Road and the southerly line of Lots 75 and 76 of South Houston Gardens No. 1 Subdivision, to the centerline of Berry Bayou;

THENCE in a northwesterly direction along the centerline of Berry Bayou, to the point of intersection with the northerly right-of-way line of Allen Street and Allen Street extended;

THENCE in a westerly direction along the northerly right-of-way line of Allen Street, to the point of intersection with the westerly right-of-way line of Canniff Street, said point being the northwesterly corner of the City of South Houston;

THENCE southerly along the westerly line of Canniff Street and the westerly line of the City of South Houston, to the southwesterly corner of the City of South Houston, said point being in the southerly line of Genoa Avenue;

THENCE easterly along the southerly line of Genoa Avenue and Genoa Avenue extended, to the point of intersection with the southwesterly right-of-way line of the Allen-Genoa Road;

THENCE across the Allen-Genoa Road, to the point of intersection of the southerly line of the H. T. & B. R.R. Survey Abstract No. 394 with the northeasterly right-of-way line of the Allen-Genoa Road;

THENCE easterly along the southerly line of the H. T. & B. R.R. Survey Abstract No. 394, to the southeasterly corner of Alta Vista Acres No. 3, also being the northeasterly corner of Highland Acres or H. T. & B. R.R. Survey Abstract No. 389;

THENCE northerly along the easterly line of the H. T. & B. R.R. Survey Abstract No. 394, to the southwesterly corner of the Day Land and Cattle Company Survey Abstract No. 1025;

THENCE easterly along the southerly line of the Day Land and Cattle Company Survey Abstract No. 1025, to the easterly line of Preston Road extended;

THENCE northerly along the easterly line of Preston Road extended and Preston Road, to a point 400 feet northerly of Spencer Highway;

THENCE in an easterly direction parallel with and 400 feet from the northerly right-of-way line of Spencer Highway, to a point of intersection with the westerly city limit line of the city of La Porte;

THENCE in a southerly direction along said westerly city limit line of the city of La Porte, to the northerly right-of-way line of Spencer Highway;

THENCE westerly along the northerly right-of-way line of Spencer Highway to the westerly line of Lily Street in Golden Acres Annex;

THENCE southerly along the westerly line of said Lily Street and Lily Street extended, to the north line of South Houston Gardens No. 4;

THENCE westerly along the northerly line of South Houston Gardens No. 4, to the northwesterly corner of South Houston Gardens No. 4;

THENCE southerly along the westerly line of South Houston Gardens No. 4, to the south line of John M. Swisher Survey;

THENCE due west, to a point in a line which is the east line of Lots 41 to 47, inclusive, of South Houston Gardens No. 2;

THENCE southerly along the easterly line of Lots 41 to 47, inclusive, of South Houston Gardens No. 2, to the southeast corner of said Lot 47;

THENCE westerly along the south line of Lots 47, 34, 33, 20, 19, 6, and 5 of South Houston Gardens No. 2, to the southwesterly corner of said Lot 5;

THENCE southerly along an extension southerly of the west line of Lot 5 of said South Houston Gardens No. 2, to a point where the north line of Snodden Avenue in Highland Acres extended easterly would intersect said line;

THENCE westerly along the northerly line of said Snodden Avenue extended and said Snodden Avenue to the northeasterly right-of-way line of Allen-Genoa Road;

THENCE northwesterly along the northeasterly line of the Allen-Genoa Road, to a point 400′ southerly from and measured at right angles to the southerly line of Alta Vista Acres (Addition) No. 3;

THENCE westerly along a line 400′ from and parallel to the southerly line of the said Alta Vista Acres No. 3 and continuing along said line 400′ from and parallel to the southerly line of South Houston, to the southwesterly line of the Galveston Road (and being the road for many years existing and known as such and not to be confused with the present U. S. Highway No. 75 generally known as the Gulf Freeway);

THENCE southeasterly along the southwesterly line of the said old Galveston Road, to the northerly line of Ave. "O" in the Townsite of Geona;

THENCE westerly along the northerely line of the said Avenue "O" extended, to the northeasterly line of the Gulf Freeway;

THENCE westerly (crossing the said Gulf Freeway), to the point of intersection of the southwesterly line of the Gulf Freeway and the northerly line of the Watts Road;

THENCE westerly and thereafter southwesterly along the northerly and northwesterly lines of the said Watts Road to the point where the said road makes a turn toward the southeast;

THENCE southeasterly along the southwesterly line of the said Watts Road to the point where said road again makes a turn toward the southwest;

THENCE southwesterly along the northwesterly line of the said Watts Road and along said line extended to Clear Creek, to the center line of Clear Creek;

THENCE westerly along the meanders of and with the center line of Clear Creek, to its intersection with the boundary line bet en Harris County and Fort Bend County;

THENCE northwesterly along the boundary line between Harris County and Fort Bend County, to a point where the easterly line of Fondren Road, if extended southerly, would intersect such boundary line between Harris County and Fort Bend County;

THENCE northerly along the easterly line of the said Fondren Road if so extended and along the easterly line of the said Fondren Road, to the center line of Brays Bayou;

THENCE westerly along the center line of Brays Bayou, to the easterly line of the Roark Road;

THENCE northerly along the easterly line of Roark Road and along the extension of said line across the T. & N. O. R. R. right-of-way, to the northerly line of the T. & N. O. R. R. right-of-way;

THENCE westerly along the northerly line of the T. & N. O. R. R. right-of-way, to the easterly line of Rogers Road;

THENCE northerly along the easterly line of Rogers Road and along the extension of said line across the Westheimer Road, to the northerly line of Westheimer Road;

THENCE westerly along the northerly line of Westheimer Road, to the easterly line of Hayes Road, the place of beginning.

SECTION 2: All of the area which is not now within the limits of the City of Houston, but which is comprised within the boundaries or limits hereinabove set forth is hereby annexed to and made a part of the City of Houston, save and except such thereof as is now within the limits of any City, Town, or Village other than the City of Houston (whether such other City, Town, or Village be a Home Rule City or exists pursuant to incorporation under any general or special law of the State of Texas).

SECTION 3: Provided further nevertheless that if there is included within the general description provided in Sections 1 and 2 of this ordinance to be hereby annexed to the City of Houston any lands or area which it is not within the jurisdiction of the City of Houston to annex is hereby excluded and excepted from the area to be hereby annexed as fully as if it had been hereinabove expressly described and excepted from such area.

SECTION 4: Provided, that nothing herein or by reason hereof is to be construed to in any wise affect, curtail or abandon the jurisdiction of the City of Houston over any territory not included herein, which was acquired and obtained by virtue of that certain ordinance passed by the City Council of said City on the 18th day of April, 1913 entitled:

"AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF HOUTSON EASTWARDLY IN A GENERAL DIRECTION WITH BUFFALO BAYOU AND THE HOUSTON SHIP CHANNEL, SO AS TO INCLUDE IN SAID CITY THE SAID NAVIGABLE STREAM AND THE LAND LYING ON BOTH SIDES THEREOF FOR A DISTANCE OF TWENTY-FIVE HUNDRED (2500) FEET FROM THE THREAD OF THE STREAM, TO A DISTANCE OF TWENTY (20) MILES IN AN AIR

LINE FROM THE PRESENT EASTERLY BOUNDARY OF SAID CITY AS ESTABLISHED BY THE CITY CHARTER GRANTED BY THE LEGISLATURE OF THE STATE OF TEXAS IN THE YEAR 1905; AND ALSO EXTENDING THE WESTERN LIMITS OF SAID CITY WESTWARDLY IN A GENERAL DIRECTION WITH SAID BUFFALO BAYOU, SO AS TO INCLUDE SAID STREAM AND THE LAND LYING ON BOTH SIDES THEREOF FOR A DISTANCE OF TWENTY-FIVE HUNDRED (2500) FEET FROM THE THREAD OF SAID STREAM TO THE DIVIDING LINE BETWEEN THE ROBERT VINCE SURVEY AND THE CHARLES SAGE AND ALEX EWING SURVEYS, AND DECLARING AN EMERGENCY."

But said ordinance, except to such extent, if any, as the same may be amended hereby, is to remain in full force and effect and the said City of Houston is to have and exercise all the rights, powers, authority, and privileges in said territory given by law and acquired by reason of the passage of said ordinance.

SECTION 5. Should any section or part of this ordinance be held unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity of such section or part shall in no wise affect, impair or invalidate the remaining portions thereof but as to such remaining portions the same shall be and remain in full force and effect; and should this ordinance for any reason be ineffective as to any part of the area hereby annexed to the City of Houston or as to any part of the area hereby declared and ordained to be within the city limits of the City of Houston, such ineffectiveness of this ordinance as to any such part or parts of any such area shall not affect the effectiveness of this ordinance as to all of the remainder of such area and Council

hereby declares it to be its purpose to annex to the City of Houston every part of the area described in Section 1 of this ordinance (subject to the exception stated in Section 2 and the exceptions, if any, accomplished by Section 3 hereof) regardless of whether any other part of the land therein described is hereby effectively annexed to the City.

SECTION 6. That from and after the passage of this ordinance, the inhabitants of the territory hereby annexed shall be entitled to all the rights and privileges of other citizens of the City of Houston and shall be bound by the acts, ordinances, resolutions and regulations of the said City of Houston.

SECTION 7. The City Secretary is hereby authorized to publish this ordinance one time in some daily newspaper published in the City of Houston, Texas, and this ordinance shall not finally be passed until at least thirty days have elapsed after such publication.

Passed first reading this 1st day of February, 1956.

Passed second reading this....day of....., 1956,

Passed third and final reading this ....day of....., 1956.

Passed this ..... day of ....., 1956.

Approved this ..... day of ....., 1956.

Mayor of the City of Houston

Approved:

F. F. BEADLE
Assistant City Attorney

No. 18583

1st Reading
Book No. Annexation Page No. 126-131
2nd Reading 131-136

• • • • •

**EXHIBIT "B"**

BOOK NO. DDD, PAGE NO. 372

#2234

AN ORDINANCE EXTENDING THE CITY LIMITS OF THE CITY OF HOUSTON TO INCLUDE ALL LANDS AND AREA WITHIN CERTAIN LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; ANNEXING TO THE CITY OF HOUSTON ALL OF THE AREA WITHIN SAID LIMITS AND BOUNDARIES WITH CERTAIN EXCEPTIONS; PROVIDING THAT SUCH ORDINANCE SHALL NOT AFFECT THE JURISDICTION OF THE CITY OF HOUSTON OVER CERTAIN TERRITORY WHICH WAS ACQUIRED BY VIRTUE OF AN ORDINANCE PASSED APRIL 18, 1913; PROVIDING A SAVING CLAUSE; AND PROVIDING THAT THE INHABITANTS OF THE TERRITORY HEREBY ANNEXED SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS OF THE CITY OF HOUSTON AND SHALL BE BOUND BY THE ACTS, ORDINANCES, ETC., OF SAID CITY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

(CLERK'S EXPLANATORY NOTE — The body of this ordinance appearing as Exhibit B and consisting of 7 numbered sections has been omitted by direction as the body is identical with the body of the Ordinance attached as Defendants' Exhibit A to this same affidavit, Transcript, Pages 188 through 201, except that the description was amended in this ordinance to include certain additional territory north or northeast of U. S. Highway No. 290, which change

was in accordance with the amendment ordered by Motion No. 4602, Defendants' Exhibit C-2, same affidavit, Page 206 of this Transcript.)

Passed first reading the 1st day of February, 1956.

Passed second reading as amended this 15th day of February, 1956.

Passed third and final reading this ..... day of ....., 1956.

Passed this ..... day of ....., 1956.

Approved this ..... day of ....., 1956.

Mayor of the City of Houston

Approved:

F. F. BEADLE
Assistant City Attorney

No. 18,583

* * * * *

## EXHIBIT "C-1"

### EXCERPTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS

Council Chamber, City Hall, Wednesday, February 1, 1956

A regular meeting of the City Council was held at 10:30 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette, and Mr. George D. Neal, City Attorney, and Mr. F. F. Beadle, First Assistant City Attorney, present.

Mayor Holcombe verbally appointed the Ordinance Committee to be composed of Councilmen Kesseler, McLemore and Marquette.

Mayor Holcombe — Re-appoint Ord. Com.

Motion #4498
Appoint Ordinance
Committee

MOTION by Councilman Wilson that the verbal appointment by Mayor Holcombe of the Ordinance Committee, composed of Councilmen Kesseler, McLemore and Marquette be and the same is hereby confirmed by Council.

Seconded by Councilman Brakefield and carried. ADOPTED.

Vote: Mayor Holcombe, Councilmen McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none. Councilmen Kesseler and Resweber absent.

Mayor Holcombe—
Re: Ord. Extending
City Limits Presented

Mayor Holcombe then stated he had an ordinance he wanted to present to Council extending the City Limits of the City of Houston and that the extensions proposed in the ordinance could be changed at any time until the final passage of the ordinance. The Mayor stated the ordinance must be passed on three separate readings if Council desired to pass it and that he had studied the boundaries set out in the ordinance. The ordinance was then read in full.

Ordinance #2234
Further Extending
City Limits

An ordinance entitled: "An ordinance extending the City limits of the City of Houston to include all lands and area within certain limits and boundaries with certain exceptions; annexing to the City of Houston all of the area within said limits and boundaries with certain exceptions; providing that such ordinance shall not affect the jurisdiction of the City of Houston over certain territory which was acquired by virtue of an ordinance passed April 18, 1913; providing a saving clause; and providing that the inhabitants of the territory hereby annexed shall be entitled to the rights and privileges of other citizens of the City of Houston and shall be bound by the acts, ordinances, etc., of said City", was submitted, placed on its first reading in full and passed by the following vote: "Aye" Mayor Holcombe, Councilmen Kesseler, McLemore, Wilson, Brakefield, Welch and Marquette. "Nay" Councilman Reeves. Councilman

Resweber absent. Upon motion of Councilman Brakefield, seconded by Councilman McLemore, the ordinance was permitted to take its usual course. All voting aye except Councilman Reeves voting no. (Councilman Resweber absent.)

C. Welch — Re: Information on Ord.

Councilman Welch then stated his vote was contingent on Council members receiving certain information prior to the next passage of the ordinance.

Motion #4499 In Connec. with Ord. Extending City Limits Furnish Council Members Population Density Maps, etc., of Water Districts

MOTION by Councilman Welch that in connection with the ordinance passed on its first reading at this Council Meeting, extending the limits of the City of Houston, each member of Council to be furnished population density maps, bonded indebtedness of each water district included in the extension and the boundaries of each such water district. Seconded by Councilman Marquette and carried. ADOPTED.

Vote: Mayor Holcombe, Councilmen Kesseler, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette voting aye. Nays none. Councilman Resweber absent.

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**EXHIBIT "C-2"**

EXCERPTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS

Council Chamber, City Hall, Wednesday, February 15, 1956

A regular meeting of the City Council was held at 10:30 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, Resweber, McLemore, Brakefield, Welch and Marquette, and Mr. George D. Neal, City Attorney, Mr. F. F. Beadle, First Assistant City Attorney, and Mr. DeWitt Reagan, Assistant City Attorney, present. Councilman Wilson out of the City. Councilman Reeves absent due to illness.

Mayor Holcombe — Re: Motions in Connec. with Annexation Ord.

Mayor Holcombe then stated he wanted to present to Council and requested passage of tnree motions that were prepared by the Legal Department in connection with the second reading of the annexation ordinance.

Motion #4601 Suspend Rules to Permit Further Consideration of Ord. #2234

MOTION by Councilman Welch that the rules governing the procedure of the City Council remain and be suspended in order to permit the further consideration and readings of Ordinance No. 2234 passed on first reading February 1, 1956.

Seconded by Councilman Marquette and carried.

ADOPTED

Vote: Mayor Holcombe, Councilmen Kesseler, Resweber, McLemore, Brakefield, Welch and Marquette voting aye. Nays none.

Motion #4602 Amend Annex. Ord. to Include Additional Territory

MOTION by Councilman McLemore that Ordinance No. 2234 passed on its first reading February 1, 1956, be amended to include certain additional territory north or northeast of U. S. Highway No. 290, the amendment to be in accordance with a new draft of such ordinance in all things identical with such ordinance passed on its first reading except for appropriate changes in the description of the area to be annexed so as to make the proposed inclusion of such additional territory.

Seconded by Councilman Brakefield and carried.

ADOPTED

Vote: Mayor Holcombe, Councilmen Kesseler, McLemore, Brakefield, Welch and Marquette voting aye. Councilman Resweber voting no.

Motion #4603 Call for Further Reading of Annexation Ord.

MOTION by Councilman Brakefield that Ordinance No. 2234 passed on its first reading by the City Council on February 1, 1956, be called up for a further reading as amended pursuant to a motion this day heretofore passed.

Seconded by Councilman McLemore and carried.

ADOPTED

Vote: Mayor Holcombe, Councilmen Kesseler, McLemore, Brakefield, Welch and Marquette voting aye. Councilman Resweber voting no.

Ordinance #2234 Further Extending City Limits

An Ordinance, as amended, entitled: "An ordinance extending the City Limits of the City of Houston to include all lands and area within certain limits and boundaries with certain exceptions; annexing to the City of Houston all of the area within said limits and boundaries with certain exceptions; providing that such ordinance shall not affect the jurisdiction of the City of Houston over certain territory which was acquired by virtue of an ordinance passed April 18, 1913; providing a saving clause; and providing that the inhabitants of the territory hereby annexed shall be entitled to the rights and privileges of other citizens of the City of Houston and shall be bound by the acts, ordinances, etc., of said City", was submitted placed on its second reading in full, as amended, and passed by the following vote: "Aye" Mayor Holcombe, Councilmen Kesseler, McLemore, Brakefield, Welch and Marquette. "Nay" Councilman Resweber.

* * * * *

## EXHIBIT "C-3"

## EXCERPTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS

Council Chamber, City Hall, Wednesday, March 7, 1956

A regular meeting of the City Council was held at 10:30 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette, and Mr. George D. Neal, City Attorney, and Mr. F. F. Beadle, First Assistant City Attorney, present.

Mr. R. C. Platzer — Re: Oppose Annexation of Additions

Mr. R. C. Platzer, 7538 Almeda-Genoa Road, representing the Voters League of Harris County, Mykawa-Minnetex and Skyscraper Shadows Additions, stated he represented 2,000 people in that area and they were opposed to being annexed to the City of Houston unless the City was able to give them City facilities. The protest was referred by Mayor Holcombe to the Director of City Planning for notation on the map.

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**EXHIBIT "C-3-a"**

EXCERPTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS

Committee Room, Second Floor, City Hall,
Tuesday, March 27, 1956

An adjourned meeting of the City Council was held at 2:05 p.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield and Reeves, and Mr. George D. Neal, City Attorney, present. Councilman Welch out of the City. Councilman Marquette absent.

Recom to Annex Lake Houston

Recommendation from Mr. Jesse Andrews, Chairman, Houston City Planning Commission, that the City Council annex Lake Houston and the canal extending from the Lake to Houston, was presented and referred by Mayor Holcombe to Councilmen McLemore, Kesseler and Brakefield for recommendation.

C. Reeves — Re: Annex Lake Houston

Councilman Reeves stated he would also like a report from the City Attorney as to how the annexation of this property will affect the City in the future, stating that it was intimated by the Chamber of Commerce that it may become necessary to create a river authority and if this is done, could the City disannex the Lake and canal.

* * * * *

## EXHIBIT "C-4"

## EXCERPTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS

Council Chamber, City Hall, Wednesday, April 18, 1956

A regular meeting of the City Council was held at 10:30 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, McLemore, Wilson, Brakefield, Welch and Reeves, and Mr. George D. Neal, City Attorney, Mr. F. F. Beadle, First Assistant City Attorney, and Mr. Charles A. Easterling, Assistant City Attorney, present. Councilmen Resweber and Marquette absent.

Mrs. F. E. Erdman—Re: Annexation of Territory

Mrs. F. E. Erdman, 6806 Nordling, requested to be advised when the territory bounded by Tidwell Road on the South, Hardy on the East, Little York School on the North and the Super Highway on the West, would be annexed to the City of Houston. Mrs. Erdman stated that a water district was being formed in that territory, and the district intended to submit a large Bond issue and she was afraid the City would not annex the territory if the bonds were approved. The Secretary was instructed to advise Mrs. Erdman that the territory is included in the proposed extension, but we did not know when it would be passed finally and that the water district could be excluded if the indebtedness was too high.

Mrs. C. L. Krouse—Re: Annexation of Territory

Mrs. C. L. Krouse, 216 Dippling Lane, stated she lived in the area mentioned by Mrs. Erdman and she was opposed to the water district although her name was signed to the petition, she did not sign it. Mrs. Krouse stated that she was told that if the bonds were approved, the City would annex the territory, if the City was allowed to spend the money. Mrs. Krouse asked the Council if the

City would annex the territory if the water district was formed, and the Secretary was instructed to advise Mrs. Krouse that the City was not obligated to take in any specific territory and it could be excluded if the indebtedness was too high.

• • • • •

## EXHIBIT "C-5"

### EXCERPTS FROM THE MINUTES OF THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS

Council Chamber, City Hall, Wednesday, August 29, 1956.

Regular Meeting

A regular meeting of the City Council was held at 10:30 a.m. on this date with Mayor Holcombe presiding and with Councilmen Kesseler, Resweber, McLemore, Wilson, Brakefield, Welch, Reeves and Marquette, and Mr. George D. Neal, City Attorney, and Mr. F. F. Beadle, First Assistant City Attorney, present.

Mr. Gibler Spoke Relative to Creating Fresh Water District No. 39

Mr. Frank Gibler, 1929 Heaney Drive, read a statement to the City Council, relative to proposed election for the purpose of creating Fresh Water District No. 39, stating that the promoters of the Water District are advising the people in the area that the Mayor and Council are in favor of the creation of the district. Mr. Gibler requested Council to act, stating its position upon annexation of territories with a large bonded indebtedness.

Motion #6207 Council Denies That It Agreed to Annex Area Comprising Fresh Water District No. 39

MOTION by Councilman Reeves that the City Council repudiate and deny any suggestion that it has as a body, or that its members as individuals, have promised or agreed that the City will annex the area comprising proposed Fresh Water District No. 39, or that they are in favor of or desire to encourage the formation of such district.

Seconded by Councilman Welch and carried. ADOPTED.

Vote: Mayor Holcombe, Councilmen Kesseler, Resweber,

McLemore, Wilson, Welch, Reeves and Marquette voting aye. Nays none. Councilman Brakefield absent.

Mrs. Curtis and Mrs. Norris Appear in Connec. with Fresh Water District No. 39

Mrs. W. J. Curtis, 5813 Airline Drive, and Mrs. C. R. Norris 1044 Bauman Road, also appeared in connection with the statement made by the promoter of Fresh Water District No. 39 and requested the Council to answer certain questions for her to be used in connection with the proposed election for creating the district. Mrs. Curtis requested answers to the following questions, and the Secretary was instructed to advise Mrs. Curtis of Council's answers: (1) Has the City Council made any commitments to Water District No. 39? Answer: No. (2) Does the Water District tax stop if the City annexes that area? Answer: Yes. (3) Will the people in that area pay City taxes the first year, if annexed? Answer: City taxes will be due in December of the following year, if the area is annexed. (4) Would an area get sewers sooner if they have a Water District? Answer: That is problematical. (5) What are the advantages or disadvantages to a newly annexed area if they have a Water District? Answer: The Council cannot answer that question. (6) What would the City consider a large debt? Answer: The Council cannot answer that question.

* * * * *

Filed Feb. 21, 1957

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Filed Feb. 28, 1957

## (PLAINTIFFS')
## AFFIDAVITS OF W. SEARS McGEE AND WILL SEARS OPPOSING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND SUPPORTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Before Me, the undersigned authority, a Notary Public in and for the County of Harris and the State of Texas,

on this day personally appeared W. Sears McGee and Will Sears, who each being by me duly sworn upon their oath depose and say, each for himself and not for the other, as follows:

**Affidavit of W. Sears McGee**

My name is W. Sears McGee. I am a citizen of Houston, Harris County, Texas, and I am one of the attorneys for the Plaintiffs in this cause. I know of my own knowledge that the facts stated herein are true and correct and I make this affidavit on my personal knowledge.

I have examined the public records maintained and kept by the County Clerk of Harris County, Texas, who is ex officio Clerk of the Commissioners Court of Harris County, Texas in relation to the organization and establishment of the various and several Water Control and Improvement Districts located in Harris County, Texas. I have particularly examined the records of the organization and establishment of the districts which appear in the following list and I have examined each record to ascertain the total acreage contained within each such district. According to such public records, maintained in such public office, the total acreage of each of the following districts is shown in the following tabulation:

| Harris County Water Control & Improvement District Number | Number of Acres In District |
|---|---|
| 11 | 781 |
| 20 | 344 |
| 22 | 889.06 |
| 24 | 4372.00 |
| 26 | 500.00 |
| 32 | 500.00 |
| 33 | 400.00 |
| 34 | 860.00 |
| 39 | 1225.00 |
| 42 | 548.00 |

Each of the foregoing Water Control and Improvement Districts is located in Harris County, Texas and is within the area which the City of Houston claims to have annexed by Ordinance No. 3351 and has been previously admitted by Defendants by admissions on file in this cause, to be a district which the City is purporting to take over and abolish under the supposed authority of Article 1182c-1 of Vernon's Annotated Civil Statutes.

/s/ W. Sears McGee
W. Sears McGee

Subscribed and Sworn to Before Me this 28th day of February, 1957, to certify which witness my hand and seal of office.

/s/ Dorothy W. Willis
Notary Public in and for
Harris County, Texas

[Seal]

**Affidavit of Will Sears**

My name is Will Sears. I am a citizen of Houston, Harris County, Texas, and I am one of the attorneys for the Plaintiffs in this cause. I know of my own knowledge that the facts stated herein are true and correct and I make this affidavit on my personal knowledge.

I have examined the public records maintained and kept by the County Clerk of Harris County, Texas, who is ex officio Clerk of the Commissioners Court of Harris County, Texas in relation to the organization and establishment of the various and several Water Control and Improvement Districts located in Harris County, Texas. I have particularly examined the records of the organization and establishment of the districts which appear in the following list and I have examined each record to ascertain the total acreage contained within each such district. Ac-

cording to such public records, maintained in such public office, the total acreage of each of the following districts is shown in the following tabulation:

| Harris County Water Control & Improvement District Number | Number of Acres In District |
|---|---|
| 44 | 490 |
| 47 | 223.87 |
| 49 | 1267.01 |
| 51 | 620.00 |
| 52 | 250.00 |
| 53 | 280.73 |
| 54 | 261.2805 |
| 57 | 177.94 |
| 59 | 468.597 |
| 62 | 152.171 |

Each of the foregoing Water Control and Improvement Districts is located in Harris County, Texas and is within the area which the City of Houston claims to have annexed by Ordinance No. 3351 and has been previously admitted by Defendants by admissions on file in this cause, to be a district which the City is purporting to take over and abolish under the supposed authority of Article 1182c-1 of Vernon's Annotated Civil Statutes.

/s/ Will Sears
Will Sears

Subscribed and Sworn to Before Me this 28th day of February, 1957, to certify which witness my hand and seal of office.

/s/ Dorothy W. Willis
Notary Public in and for
Harris County, Texas

[Seal]

FILED February 28, 1957

Filed March 25, 1957

## PLAINTIFFS' MOTION CONCERNING FORM OF JUDGMENT ENTERED.

*To The Honorable Judge of Said Court:*

Now come the plaintiffs in the above styled and numbered cause following the Court's announcement of its decision upon the motions for summary judgment, which decision was rendered upon the 12th day of March, 1957, and respectfully move this Honorable Court to enter the judgment which is attached to this motion and made a part hereof. Plaintiffs move the Court to sign and enter this decree as its final judgment in this cause, without waiving any contention in this case made by the plaintiffs and plaintiffs continue to except to the decision of the Court. However, the form of judgment presented by the defendants does not embody the decision of the court as announced from the bench, and the form here presented is in accordance with the Court's pronouncement and embodies the decision stated in open Court.

(Signatures of Counsel)

FILED March 25, 1957

* * * * *

ORDER OF THE COURT

March 25, 1957

Timely presented and refused.

WILMER J. HUNT
Judge

Signed March 25, 1957

Filed March 25, 1957

## FINAL JUDGMENT OF THE COURT
## (Form Proposed by Plaintiffs Attached to Foregoing MOTION)

BE IT REMEMBERED that on the 18th day of February, 1957, after due notice, this cause came on to be heard on the motion of the plaintiffs in the First Cause of Action and on the motion of the plaintiffs in the Second Cause of Action herein for a summary judgment, and also on the motion of the defendant in the First Cause of Action and the defendants in the Second Cause of Action herein for a summary judgment; and both plaintiffs and defendants appeared through their attorneys of record and announced ready for the hearing on such motions; and the Court, after having considered the pleadings, the affidavits filed herein, and the deposition received in this cause, took the matter under advisement until the 12th day of March, 1957; thereupon, the Court announced in open Court with all parties represented by their attorneys of record that he is of the opinion and so finds with respect to the motion of the defendant as to the First Cause of Action and the motion of the defendants as to the Second Cause of Action, such defendants are not entitled to judgment as a matter of law upon their contention that this suit is a so-called collateral attack upon the ordinance of annexation which may not be maintained without the joinder of the State but that with respect to the motion of the defendant as to the First Cause of Action and the motion of the defendants as to the Second Cause of Action insofar as the validity of the annexation proceedings and ordinance are concerned there is no genuine issue as to any material fact and such defendants are entitled to judgment as a matter of law.

It is, therefore, ORDERED, ADJUDGED and DECREED that the motion of the defendant, the City of Hous-

ton, for a summary judgment with respect to the First Cause of Action alleged herein be and the same is hereby granted and the motion of the defendants, the City of Houston and Roy B. Oakes, with respect to the Second Cause of Action alleged herein be and the same is hereby granted; and it is further ORDERED that the plaintiffs in the First Cause of Action take nothing herein against the defendant, the City of Houston, and that the plaintiffs in the Second Cause of Action take nothing herein against the defendants, the City of Houston and Roy B. Oakes, and that the plaintiffs in each of said causes of action be and they are hereby denied any declaratory relief.

It is further ORDERED that the motion of the plaintiffs in the First Cause of Action for a summary judgment and the motion of the plaintiffs in the Second Cause of Action for a summary judgment be and the same are hereby denied.

It is further ORDERED that all costs incurred herein be taxed against the plaintiffs in the First Cause of Action and in the Second Cause of Action.

To which judgment of the Court the plaintiffs in each of said causes of action in open court duly excepted and gave notice of appeal to the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas, sitting at Galveston.

ENTERED AND SIGNED this ..... day of March, 1957.

.....

Judge of the 133rd Judicial District Court, Harris County, Texas

* * * * *

ORDER OF THE COURT

March 25, 1957. Timely presented and refused.

WILMER B. HUNT, Judge.

Signed March 25, 1957

Signed March 25, 1957

## FINAL JUDGMENT OF THE COURT

BE IT REMEMBERED that on the 18th day of February, 1957, after due notice, this cause came on to be heard on the motion of the plaintiffs in the First Cause of Action and on the motion of the plaintiffs in the Second Cause of Action herein for a summary judgment, and also on the motion of the defendant in the First Cause of Action and the defendants in the Second Cause of Action herein for a summary judgment; and both plaintiffs and defendants appeared through their attorneys of record and announced ready for the hearing on such motions; and the Court, after having considered the pleadings, the affidavits filed herein, and all other evidence received in this cause, took the matter under advisement until the 12th day of March, 1957; thereupon, the Court announced in open Court with all parties represented by their attorneys of record that he is of the opinion and so finds that with respect to the motion of the defendant as to the First Cause of Action and the motion of the defendants as to the Second Cause of Action there is no genuine issue as to any material fact and such defendants are entitled to judgment as a matter of law.

It is, therefore, ORDERED, ADJUDGED and DECREED that the motion of the defendant, the City of Houston, for a summary judgment with respect to the First Cause of Action alleged herein be and the same is hereby granted and the motion of the defendants, the City of Houston and Roy B. Oakes, with respect to the Second Cause of Action alleged herein be and the same is hereby granted; and it is further ORDERED that the plaintiffs in the First Cause of Action take nothing herein against the defendant, the City of Houston, and that the plaintiffs in the Second Cause of Action take nothing herein against the defendants, the City of Houston and Roy B. Oakes, and that the plain-

tiffs in each of said causes of action be and they are hereby denied any declaratory relief.

It is further ORDERED that the motion of the plaintiffs in the First Cause of Action for a summary judgment and the motion of the plaintiffs in the Second Cause of Action for a summary judgment be and the same are hereby denied.

It is further ORDERED that all costs incurred herein be taxed against the plaintiffs in the First Cause of Action and in the Second Cause of Action.

To which judgment of the Court the plaintiffs in each of said causes of action in open court duly excepted and gave notice of appeal to the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas, sitting at Galveston.

ENTERED this 25th day of March, 1957.

/s/ WILMER B. HUNT
Judge of the 133rd Judicial District Court, Harris County, Texas

RECORDED in Volume 9, Page 590, Minutes of the 133rd Judicial District Court of Harris County, Texas.

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Filed April 9, 1957

## APPEAL BOND

*Know all Men by These Presents:*

WHEREAS, in the above entitled and numbered cause pending in the District Court of Harris County, Texas, 133rd Judicial District, at a regular term of said Court, to-wit, on the 25th day of March, 1957, the Defendants City of Houston and ROY B. OAKES, City Controller of the City of Houston, recovered a judgment against the hereinafter named Plaintiffs, that the Plaintiffs take nothing by their suit against the Defendants and that the Defendants be

denied all declaratory relief, to which judgment and its record in the minutes of said Court reference is here made for all purposes, from which judgment the hereinafter named Plaintiffs desire to take an appeal to the Court of Civil Appeals for the First Supreme Judicial District of Texas, sitting at Galveston:

Now Therefore, we, E. E. Forbes, E. J. Bray, F. L. Lepper, Fred Flanders, D. L. Craig, Emmett C. Dudley, R. C. Platzer, F. G. Miller, B. W. Alford, J. J. Siebeneicher, A. M. Davis, C. E. Clupka, N. S. Dunaway, Henry Radack, Milton L. Alford, George A. Vondergoltz, Fred Allen, C. L. Anderson, S. R. Asback, E. W. Baker, V. R. Baldwin, W. L. Barber, Lee J. Beal, J. O. Bell, Mrs. F. L. Benthall, J. W. Birdwell, John R. Bohacek, Wm. J. Boudreaux, Mrs. Louis Breaux, Ray L. Brewer, J. M. Brogan, Walter S. Brzycki, Eddie Bychlik, E. E. Carroll, J. W. Carter, Jesse R. Case, Mrs. Jesse R. Case, J. D. Cass, Mrs. H. F. Cerwinske, E. S. Chandler, Jessie R. Chandler, E. L. Clary, Mrs. E. L. Clary, Frank J. Cleboski, W. E. Coats, Jr., Sam H. Cook, Bob Cooper, E. G. Cox, E. N. Cox, Geo. S. Cox, Jr., Mrs. Beulah C. Crews, R. D. Crews, H. D. Culpepper, R. J. Dempsey, C. O. Dinges, Merle H. Dodd, J. J. Doubrava, Mrs. K. I. Doud, J. N. Dudding, Mrs. R. Dussler, Mrs. James U. Duty, F. B. Evans, A. G. Farris, Vernon W. Farris, Mrs. Vernon W. Farris, E. H. Fitzhugh, Jr., Elroy Forbes, J. H. Forrest, Sr., J. H. Forrest, Jr., A. L. Fox, Sr., J. H. Foxworth, V. W. Frame, Marvin W. Franer, John D. Fritsch, John L. Geib, C. B. Gilman, D. D. Godwin, W. C. Golpe, Doyle E. Gore, W. W. Gouger, Mrs. W. W. Gouger, J. Grady Gray, Mrs. J. Grady Gray; W. W. Hale, Leona Harper, Q. R. Harper, R. L. Harris, J. E. Hayden, Mrs. J. E. Hayden, S. C. Hedges, H. M. Henley, L. A. Hill, Jr., Mrs. L. A. Hill, Jr., H. H. Hinson, J. H. Hobbs, Mrs. J. H. Hobbs, Robert B. Hoch,

Lelia Hodge, Lillie Holbrook, C. C. Holt, Mrs. C. C. Holt, S. E. Holton, R. G. Horne, M. King Hubbert, C. H. Huber, John E. Hutzler, Jr., D. J. Idlett, Euel D. Johnson, Mrs. Pete Karsten, Sr., Curtis D. Kelly, Louis Konvicka, H. P. Kuppers, R. L. Lange, H. F. Langner, R. A. Leatherwood, Sr., Mrs. R. A. Leatherwood, Sr., Neal Lesser, E. E. Lindsay, V. C. Lroy, E. Leroy McGowen, A. E. McNeill, Mrs. A. E. McNeil, N. E. McNeil, John J. McTiernan, Jr., Allan R. Madden, D. E. Martin, Mrs. D. E. Martin, Jack M. Matthews, Mrs. Jack M. Matthews, Guy C. Mercer, Mr. and Mrs. B. R. Miller, Mrs. Joe Miller, Clift Montieth, R. Munger, Philip Nathans, Jr., Dalton L. Nevels, James W. Northrup, Wm. J. Onstad, E. F. Page, G. N. Pamplin, Mrs. G. N. Pamplin, D. V. Parish, A. S. Parks, Albert Pech, R. L. Perkins, F. J. Peters, Mrs. E. H. Phillips, Mrs. R. C. Platzer, E. E. Poklude, Emil Polansky, Joe I. Polansky, G. E. Pollock, Mrs. H. Radack, J. C. Redig, R. L. Renick, Jr., Mrs. R. L. Renick, Jr., Henry C. Richards, Mrs. Anna Lou Richardson, Donald Robertson, Margaret Jane Rogers, O. F. Rogers, Jr., D. J. Rowe, Mrs. J. A. Rudolph, Jerome A. Rudolph, B. F. Satterwhite, B. H. Satterwhite, Nancy Satterwhite, E. B. Schadler, W. J. Schwartz, J. E. Short, D. L. Smith, R. Bryon Smith, J. F. Spencer, Lynn C. Steed, W. K. Stroud, T. Tange, Lawrence T. Tilson, R. L. Tinkle, G. C. Tunnel, B. L. Tuttle, R. R. Viade, J. M. Vincent, Mrs. J. M. Vincent, Mrs. H. H. Wakehouse, Farrell L. Wallace, Mrs. Delmar R. Ward, B. L. Watson, Earl Watson, E. E. Weaver, Clem C. Welsh, R. P. Wicker, C. A. Williams, F. R. Williams, Mrs. L. B. Willis, Leslie B. Willis, Mrs. Shannon Wooderson, Mrs. Irene Woodrome, J. T. Woodrome, P. L. Wollery, Jr., Plaintiffs in the above styled and numbered cause as principals (and as representatives of the classes of citizens named respectively in the First and Second Causes of Action) and the other subscriber hereto as surety, acknowledge ourselves

bound to pay to the said City of Houston and Roy B. Oakes, City Countroller of the City of Houston, the sum of FIVE HUNDRED DOLLARS ($500.00), conditioned that the hereinabove named Plaintiffs, as Appellants, shall prosecute their appeal with effect and shall pay all the costs which have accrued in the Court below, and which may accrue in the Court of Civil Appeals and the Supreme Court.

EXECUTED this 8th day of April, 1957.

E. E. FORBES
E. J. BRAY
F. L. LEPPER
FRED FLANDERS
PRINCIPALS

(Corporate Seal)

Fidelity and Deposit Co.
of Maryland
By C. J. KENNEDY

SURETY (C. J. Kennedy)

P. O. Address of Surety:

1ST CITY NATIONAL BANK BUILDING
HOUSTON, TEXAS

I have fixed the probable amount of the costs of suit in the Court of Civil Appeals, the Supreme Court, and the Court below at TWO HUNDRED AND FIFTY DOLLARS ($250.00) and approve and file the foregoing bond this 9th day of April, 1957.

RICHARD LINDLEY
Clerk of the District Court of
Harris County, Texas

By: J. HARRY PHILLIPS
Deputy

FILED April 9, 1957.

Signed May 3, 1957.

## ORDER AS TO ORIGINAL PAPER AND EXHIBIT

This 3rd day of May, 1957, it appearing to the Court in the above styled and numbered cause that the Plaintiffs are ordering their transcript for appeal and preparing to have same printed; that the deposition of Lee McLemore on file herein is prepared and bound in the form customary in the preparation of a Statement of Facts; that the reproduction of same in the Transcript would unnecessarily lengthen the Transcript at wasteful expense; and that the said original deposition on file herein should be sent therefore to the appellate court in lieu of a copy.

It is therefore ORDERED that the Clerk of this Court mark the original deposition of Lee McLemore "Exhibit to Transcript Ordered by Trial Court" and forward the same to the appellate court as part of the record on appeal, to be there retained subject to the orders of the appellate court.

Signed and entered this 3rd day of May, 1957.

(s) Wilmer B. Hunt
Judge Presiding

Approved for entry:

Will Sears
Attorney for Plaintiffs

David T. Searls
Geo. D. Neal
Attorneys for Defendants

Filed May 3, 1957

## DESIGNATION OF RECORD ON APPEAL

*To the Honorable Richard Lindley, Clerk of the District Court of Harris County, Texas.*

The plaintiffs in the above styled and numbered cause respectfully direct and designate that the following be included in the Transcript prepared for Plaintiffs to perfect their appeal:

1. Plaintiffs' First Amended Original Petition.
   NOTE: *Omit* Exhibits A through G and place this note following the petition:

   (CLERK'S EXPLANATORY NOTE — By direction, Plaintiffs' Exhibits A through G inclusive have been omitted from this transcript to avoid unecessary duplication as the same exhibits appear as Plaintiffs' Exhibits A through G inclusive attached to Plaintiffs' Affidavit of Will Sears, said exhibits appearing on Pages....through....of this Transcript.)

2. Defendants' First Amended Original Answer.

   NOTE: *Omit* Exhibits A through C and place this note following the answer:

   (CLERK'S EXPLANATORY NOTE — By Direction, Defendants' Exhibits A through C attached to the foregoing amended answer have been omitted from this Transcript to avoid unnecessary duplication as the same appear as Defendants' Exhibits A through C attached to Defendants' Affidavit of George Neal, said exhibits appearing on Pages....through....of this Transcript.)

3. Plaintiffs' Request for Jury.

4. Defendants' Motion for Summary Judgment.

NOTE: *Omit* the copy of Ordinance No. 3351 which is attached to Defendants' Exhibit B. Affidavit of J. L. DuRoss, and place this note following the DuRoss affidavit:

(CLERK'S EXPLANATORY NOTE — Attached to the aforegoing affidavit of J. L. DuRoss is a copy of the same Ordinance No. 3351 which appears as Defendants' Exhibit A to Defendants' Motion for Summary Judgment, except that the words, "Passed fourth and final reading" appearing in Exhibit A, are changed to read, "Passed fourth reading" in the published ordinance which is part of Exhibit B. By direction, the copy which is attached to the DuRoss affidavit is omitted from this Transcript to prevent duplication.)

5. Plaintiffs' Motion for Summary Judgment.

6. (Plaintiffs') Affidavit of Will Sears in Support of Plaintiffs' Motion for Summary Judgment and Opposing Defendants' Motion for Summary Judgment.

NOTE:

(a) *Omit* the field notes in Section 1 of Plaintiffs' Exhibit A attached to this affidavit and in their place insert:

(CLERK'S EXPLANATORY NOTE—The field notes appearing here are omitted by direction. They are the same as the field notes appearing in the ordinance attached as Defendants' Exhibit A to Defendants' Motion for Summary Judgment, on Pages.... through....of this Transcript, except:

(1) The eighty-ninth call in this exhibit was changed on second reading to conform to the amendment ordered by Motion No. 6984, Plaintiffs' Exhibit D, appearing in this Transcript, Page...., and thereafter remained changed.

(2) On third and fourth reading, the 400 foot strip along Spencer Highway was not extended to the City Limits of La Porte but the strip was carried northerly from Spencer Highway along the west side of Underwood Road and then easterly along the north side of Water Control and Improvement District No. 56 to the west line of the Town of Lomax, all in accordance with the amendment ordered by Motion No. 7042, Plaintiffs' Exhibit F, this Transcript, Page.....)

(b) *Omit* from Exhibit B attached to this affidavit all entries commencing with Motion No. 6754 and insert:

(CLERK'S EXPLANATORY NOTE — This Exhibit B is a photostat of a page of the City Council minutes and, by direction, all other entries on this page have been omitted as they do not affect this suit.)

(c) *Omit* the field notes in Section 1 of Plaintiffs' Exhibit C attached to this affidavit and in their place insert:

(CLERK'S EXPLANATORY NOTE — The field notes appearing here are omitted by direction. They are the same as the field notes appearing in the ordinance attached as Exhibit A to Defendants' Motion for Summary Judgment, on Pages .....through.....of this Transcript except:

(1) On third and fourth reading, the 400 foot strip along Spencer Highway was not extended to the City limits of La Porte but the strip was carried northerly from Spencer Highway along the west side of Underwood Road and then easterly along the north side of Water Control and Improvement District No. 56 to the west line of the Town of Lomax,

all in accordance with the amendment ordered by Motion No. 7042, Plaintiffs' Exhibit F, this Transcript, Page.....)

(d) *Omit* from Exhibit D all entries preceding the entry commencing "Mayor Holcombe then asked the First Assistant City Attorney, etc.," and insert *before* those words:

(CLERK'S EXPLANATORY NOTE — This exhibit consists of photostatic copies of three pages of the City Council minutes, and, by direction, all entries except the following are omitted as they do not affect this suit.)

(e) *Omit* Sections 1 through 7 of Plaintiffs' Exhibit E attached to this affidavit, leaving only the title, the ordaining clause Section 8 and the concluding notations on passage and approval. Following the ordaining clause, insert:

(CLERK'S EXPLANATORY NOTE — The body of this ordinance appearing as Exhibit E and consisting of 7 numbered sections has been omitted by direction, as the body is identical with the body of the ordinance attached as Defendants' Exhibit A to Defendants' Motion for Summary Judgment, on Pages..... through.....of this Transcript.)

(f) *Omit* from Exhibit F all entries preceding the entry commencing "Councilman Welch stated he would like to present, etc.," and all entries commencing with Ordinance No. 3530 to end of Exhibit insert:

and at the beginning, before commencing the actual entries, insert:

(CLERK'S EXPLANATORY NOTE — This exhibit consists of photostatic copies of three pages

of the City Council minutes and, by direction, all entries except the following are omitted as they do not affect this suit.)

(g) *Omit* Exhibit H attached to this affidavit and in its place, insert:

(CLERK'S EXPLANATORY NOTE — By direction, Exhibit H attached to this affidavit has been omitted as it is a duplicate of Exhibit C attached to the Defendant's Motion for Summary Judgment which exhibit appears on Pages.....through.....of this Transcript.)

7. Plaintiffs' Request for Admissions.

8. Answer of Defendants to Plaintiffs' Request for Admissions.

9. Plaintiffs' Motion for Continuance and Resetting of Hearing on Motions for Summary Judgment — Also Submitted as Affidavit on Such Motions (with Exhibits A and B attached thereto). The parties stipulate that Defendants' motion for summary judgment was set for hearing on Feb. 4, 1957 and was reset by the Court for Feb. 18, 1957 at Plaintiffs' request.

10. Plaintiffs' Supplemental Affidavit by Will Sears.

11. Plaintiffs' Second Supplemental Affidavit by Will Sears.

12. (Plaintiffs') Affidavits of W. Sears McGee and Will Sears Opposing Defendants' Motion for Summary Judgment and Supporting Plaintiffs' Motion for Summary Judgment.

13. (Defendants') Supplemental Affidavit by George Neal (with Exhibits A, B, C, C-1, C-2, C-3, C-3-a, and C-4 attached).

NOTE: Do not include the "motion to supplement, etc.," to which this affidavit is attached and place this note immediately preceding the affidavit:

(CLERK'S EXPLANATORY NOTE — By direction, the Defendants' "Motion to Supplement Affidavit Filed in Support of Motion for Summary Judgment" to which the following affidavit is attached has been omitted from the Transcript.)

14. (Defendants') Affidavit of George Neal in Opposing Plaintiffs' Motion for Summary Judgment As to the First Alleged Cause of Action and the Second Alleged Cause of Action.

15. (Defendants') Second Supplemental Affidavit of George Neal in Support of Defendants' Motion for Summary Judgment and In Opposition to Plaintiffs' Motion for Summary Judgment.

NOTE: *Omit* Sections 1 through 7 of Defendants' Exhibit B, attached to this affidavit, leaving only the title, the ordaining clause and the concluding notations on passage and approval. Following the ordaining clause, insert:

(CLERK'S EXPLANATORY NOTE — The body of this ordinance appearing as Exhibit B and consisting of 7 numbered sections has been omitted by direction as the body is identical with the body of the Ordinance attached as Defendants' Exhibit A to this same affidavit, Transcript, Pages.....through....., except that the description was amended in this ordinance to include certain additional territory north or northeast of U. S. Highway No. 290, which change was in accordance with the amendment ordered by Motion No. 4602, Defendants' Exhibit C-2, same affidavit, Page.....of this Transcript.)

16. (Defendants') Affidavit of Anna Russell In Support of Defendants' Motion for Summary Judgment and In

Opposition to Plaintiffs' Motion for Summary Judgment.

17. Plaintiffs' Motion Concerning Form of Judgment Entered (with form attached and Court's Order Endorsed Thereon).

18. Final Judgment of the Court (with Plaintiffs' Notice of Appeal Contained Therein).

19. Plaintiffs' Appeal Bond.

20. Order of the Court on Original Exhibit.

21. Designation of the Record and Agreement.

22. Certified Bill of Costs.

GENERAL DIRECTIONS

(a) *Omit* number of case, style of case, and name of court appearing at head of each filed pleading, motion, affidavit, judgment or order.

(b) *Omit* formal signatures of counsel and insert notation, "Signatures of Counsel" wherever they occur.

(c) *Omit* any certifiicate by the City Secretary or Assistant City Secretary certifying that any instrument is a true copy, wherever such certificate occurs.

(d) Plaintiffs desire that the Transcript be printed in accordance with Paragraph (c) of the Supreme Court's Order of January 20, 1944.

(Signatures of Counsel)

The Defendants, City of Houston and Roy B. Oakes, City Controller of the City of Houston, have agreed to the foregoing designation of the record with its omissions and ex-

planations in order to comply with the Supreme Court's directive to shorten transcripts, where possible; but the parties have agreed that said Defendants shall not be prejudiced by this designation and if, during the time this case is on appeal, Defendants for any reason desire any omitted matter sent up, Defendants may request a supplemental transcript and Plaintiffs will pay the initial cost thereof and agree to any extension of briefing time made necessary by the preparation of the supplemental transcript. Plaintiffs must include this agreement in the original transcript.

(Signatures of Counsel)

Filed May 3, 1957

---

## BILL OF COSTS

No. 479,319

THE STATE OF TEXAS

E. E. FORBES, ET AL.,

v.

CITY OF HOUSTON, ET AL.

To OFFICERS OF COURT, DR.

### Clerk's Costs

| | |
|---|---|
| Docketing | $ .50 |
| Filing | 3.30 |
| Entering Appearances | 2.55 |
| Citations | 2.25 |
| Entering Orders | 2.00 |
| Entering Judgments | 1.50 |
| Filing Fee | 1.50 |
| Commission | .75 |
| Approving Bond | 1.50 |
| Transcript | 49.00 |
| Taxing Costs | .25 |
| TOTAL | $65.10 |

### Sheriff's Costs

| | |
|---|---|
| Jury Fees | $ .50 |
| Mileage | 2.50 |
| Summoning Witnesses | 1.25 |
| TOTAL | $4.25 |

### Other Costs

| | |
|---|---|
| Jury Fees | $5.00 |
| Law Library Fee | 1.00 |
| Clerk's Addt'l | 1.15 |
| TOTAL | $7.15 |

### Recapitulation

| | |
|---|---|
| Clerk | $65.10 |
| Sheriff | 4.25 |
| Other Costs | 7.15 |
| TOTAL | $76.50 |

THE STATE OF TEXAS }
COUNTY OF HARRIS }

I, R. J. LINDLEY, Clerk District Court in and for Harris County, do hereby certify that the above is a Correct Bill of all Costs incurred in the above numbered and entitled suit up to this date.

IN WITNESS WHEREOF, I, hereunto affix my hand and seal of the Court at office in Houston, Texas, this 7th day of May, A. D. 1957.

R. J. LINDLEY,
Clerk District Court
Harris County, Texas

By .....
Deputy.

THE STATE OF TEXAS
COUNTY OF HARRIS

I, R. J. LINDLEY, Clerk of the District Court of Harris County, Texas, do hereby certify that the above and foregoing are true and correct copies of all of the proceedings directed by counsel to be included in the transcript had in the case of E. E. FORBES, ET AL., v. CITY OF HOUSTON, ET AL., No. 479,319, as the same appear from the originals now on file and of record in this office.

GIVEN under my hand and seal of said Court at office in the City of Houston, on the ..... day of May, 1957.

R. J. LINDLEY,

Clerk of the District Court
of Harris County, Texas

By .....
Deputy.

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JOHN T. FEY, Clerk

IN THE

# Supreme Court of The United States

OCTOBER TERM, 1957

No. 991

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E. E. FORBES, ET AL.,

*Petitioners,*

v.

CITY OF HOUSTON, ET AL.,

*Respondents.*

---

**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS**

---

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# INDEX


| | PAGE |
|---|---|
| Opinion Below | 1 |
| Jurisdiction | 1 |
| Questions Presented | 2 |
| Constitutional Provisions, Statutes, Charter Provisions, and Ordinances Involved | 3 |
| Statement of the Case | 4 |
| I Annexation Procedure of Home Rule Cities in Texas | 4 |
| II The Facts Material to the Questions Presented | 5 |
| III Federal Questions Raised in Courts Below | 9 |
| (A) Trial Court | 9 |
| (B) Court of Civil Appeals | 9 |
| (C) Supreme Court of Texas | 10 |
| (D) Summary | 12 |
| Argument | 12 |
| I Importance of Questions | 12 |
| II The Texas Proceeding of Quo Warranto — a Remedy to Protect Private Rights | 13 |
| III Conclusions on First Question Presented | 17 |
| IV Lack of Basis for Distinction in Remedies Made By Court Below | 18 |
| Conclusion | 21 |
| Appendix A — Opinion and Judgment Below | 1 |
| Opinion of Court of Civil Appeals | 1 |
| Judgment of Court of Civil Appeals | 12 |
| Appendix B — Statutes, Charter Provisions | 13 |

# AUTHORITIES


PAGE

**Federal Cases:**

Adam v. Saenger, 303 U.S. 59, 61, 58 S. Ct. 454 (1938) ..... 2

Michigan-Wisconsin Pipe Line Company v. Calvert, 347 U.S. 157, 159, 160, 74 S. Ct. 396 (1954) ..... 2

Staub v. City of Baxley, 78 S. Ct. 277 (1958) ..... 18

Truax v. Corrigan, 257 U.S. 312, 42 S. Ct. 124 (1921).... 13, 18, 22

Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064 (1886) 13, 16, 17

**Texas Cases:**

Banton v. Wilson, 4 Tex. 400 (1849) ..... 14

Brennan v. City of Weatherford, 53 Tex. 330 (1880) ..... 14

Castleberry v. Coffee, 272 S.W. 767 (Tex. Com. App. 1925) 20

City of Centerville v. Adkisson, 291 S.W. 2d 798 (Tex. Civ. App. 1956) ..... 20

City of Corsicana v. Willmann, 147 Tex. 377, 216 S.W 2d 175 19

City of River Oaks v. Lakeworth Village, 231 S.W. 2d 768 (Tex. Civ. App. 1950, error ref. n.r.e.) ..... 19

City of San Antonio v. Mickiejohn, 89 Tex. 79, 33 S.W. 735 (1895) ..... 20

Cochran County v. Boyd, 26 S.W. 2d 364 (Tex. Civ. App. 1930, error ref.) ..... 18

Dallas County Water Control and Improvement District v. City of Dallas, 149 Tex. 362, 233 S.W. 2d 291 (1950) ..... 4

Johnson v. Zurich General Accident & Liability Ins. Co., 146 Tex. 232, 205 S.W. 2d 353 (1947) ..... 11

Kerr v. Shambaugh, 86 S.W. 2d 798 (Tex Civ. App. 1935) 20

Kuhn v. City of Yoakum, 6 S.W. 2d 91 (Tex. Com. App. 1928) ..... 18

McAllen v. Rhodes, 65 Tex. 348 (1886) ..... 15, 17

McLendon v. City of Houston, et al, 153 Tex. 318, 267, S.W. 2d 295, 296 (1954) ..... 20

Mills v. City of San Antonio, 65 S.W. 1121 (Tex. Civ. App., err. ref. 1901) ..... 20

Peters v. Gough, 85 S.W. 2d 515 (Tex. Civ. App. 1935) ..... 20

State v. Texas City, ..... Tex. ....., 303 S.W. 2d 780, 782 (1957) 20

State ex rel Bennett v. Clarendon Independent School District, ..... Tex. ..... 298 S.W. 2d 111 (1957) ..... 15, 17

| | PAGE |
|---|---|
| State ex rel Jennett v. Owens, 63 Tex. 261 (1885) | 14 |
| State ex rel Manchae v. City of Orange, 274 S.W. 2d 886 (Tex. Civ. App., 1955, err. ref. n.r.e.) | 17 |
| State ex rel Osborn v. City of McAllen, 127 Tex. 63, 91 S.W. 2d 688 | 19 |
| State ex rel Rea v. Etheridge, 32 S.W. 2d 828 (Tex. Com. App. 1930) | 20 |
| Tod v. City of Houston, 276 S.W. 419 (Tex. Com. App. 1925) | 18 |
| Zachry v. City of San Antonio, ..... Tex. ....., 305 S.W. 2d 558 (1957) | 20 |

**Federal Statutes:**

| | |
|---|---|
| 28 U.S.C.A. §1257 (3) | 2 |

**Texas Constitution:**

| | |
|---|---|
| Section 5, Article XI | 4, 18 |

**Texas Statutes:**

| | |
|---|---|
| Article 1175 | 4, 19 |
| Article 326k-26 | 8 |
| Article 6253 | 7, 14, 17 |
| Tex. Acts, 16th Leg. S.S. 1879, p. 43 | 14 |

**Texas Rules of Civil Procedure:**

| | |
|---|---|
| Rule 42 | 18 |
| 418 | 9, 10 |
| 458 | 10 |
| 469 | 10, 12 |
| 483 | 11 |
| 515 | 11 |

**Charter of City of Houston:**

| | |
|---|---|
| Section 2b., Art. 1 | 5, 19 |
| Section 3, Art. VII | 5 |

**Ordinances of City of Houston:**

| | |
|---|---|
| Ordinance No. 3351 | 6, 7, 8 |

**Miscellaneous:**

| | |
|---|---|
| Calvert, *The Application for Writ of Error*, 3 Franki Rules of Civil Proc. 404 | 11 |
| Simpson and Wall, *Problems of Precedent Affecting Courts of Civil Appeals' Opinions*, 4 S.W.L.J. 398 | 11 |

IN THE

# Supreme Court of The United States

OCTOBER TERM, 1957

No. .....

---

E. E. FORBES, ET AL.,

*Petitioners,*

v.

CITY OF HOUSTON, ET AL.,

*Respondents.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS

---

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas, entered in the above entitled case on July 11, 1957.

## OPINION BELOW

The opinion of the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas is reported at 304 S.W. 2d 542. (Appendix A, pp. 1-11.) No opinion was rendered by the Supreme Court of Texas.

## JURISDICTION

The judgment of the Court of Civil Appeals was pronounced on July 11, 1957, and Motion for Rehearing was denied on August 12, 1957. On October 30, 1957 the Supreme Court of Texas denied Petitioners' Application for Writ of

Error to the Court of Civil Appeals with the notation "Refused. No Reversible Error.", and on February 12, 1958, denied a Motion for Rehearing on the Application for Writ of Error. The Application and each Motion were timely filed. The jurisdiction of this Court is invoked under 28 U.S.C.A. §1257 (3).

The Supreme Court of Texas having denied Application for Writ of Error with the docket notation "Refused. No Reversible Error.", certiorari is properly directed to the Court of Civil Appeals as "the highest court of a State in which a decision could be had". 28 U.S.C.A. §1257 (3); *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U.S. 157, 159, 160, 74 S. Ct. 396 (1954); *Adam* v. *Saenger*, 303 U.S. 59, 61, 58 S. Ct. 454 (1938). Judgment was not final until the Order entered on February 12, 1958 denying the Motion for Rehearing on the Application for Writ of Error.

## QUESTIONS PRESENTED

The State Court held that Petitioners (affected property owners), without joinder of a State's attorney on an information in the nature of *quo warranto*, did not have access to the state courts to attack an ordinance of the City of Houston annexing 187 square miles to the limits of the City as being void for reasons not apparent on its face. These questions are thus presented:

I.

Whether the Due Process Clause and the Equal Protection Clause were violated by State Court in denying Petitioners access to the state courts to attack the ordinance because they could not obtain the consent of a State's attorney on a *quo warranto* proceeding, when:

(A) by statute such proceeding cannot be filed without consent of a State's attorney and he cannot be com-

pelled to give his consent even though a public injury is involved;

(B) under the common law of the State the State's attorney, without governing rule or standard, may consent to file such proceeding to protect a private right of a favored person even though the State has no interest in the matter, and may refuse such consent to another under like circumstances; and

(C) by practice and custom the consent of a State's attorney to such proceeding is a formality, the State being a nominal party and the litigation being conducted by the private relator.

II.

Whether the Due Process Clause and the Equal Protection Clause were violated by the refusal of the State Court to grant Petitioners access to the courts to complain that the ordinance is void for reasons not apparent on its face unless consent of a State's attorney was obtained, when under the common law of the State:

(A) an ordinance of the City of Houston is void if not adopted in compliance with controlling statutory and charter provisions, whether or not the invalidating defect is apparent on the face of the ordinance; and

(B) persons similarly situated to Petitioners, without any reasonable basis for different classification and without consent of a State's attorney, may have access to the courts to attack a similar ordinance if it happens to be void on its face.

## CONSTITUTIONAL PROVISIONS, STATUTES, CHARTER PROVISIONS, AND ORDINANCES INVOLVED

(1) The Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(2) The statutes, charter provisions and ordinances involved are set out in Appendix B, pp. 13-16.

## STATEMENT OF THE CASE

### I. Annexation Procedure of Home Rule Cities in Texas.

In 1912 Section 5, Article XI, of the Constitution of Texas was amended to provide that cities having more than 5,000 inhabitants

> "may by a majority vote of the qualified voters . . . adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with . . . general laws enacted by the legislature . . . "

At its next session, in 1913, the Legislature adopted the forerunner to the present Art. 1175, Tex. Civ. Stat. (Vernon 1948), which enumerates limitations on powers of home rule cities. The constitutional amendment is the source of power, not to the statute. *Dallas County Water Control and Improvement District* v. *City of Dallas*, 149 Tex. 362, 233 S.W. 2d 291 (1950).

The power of annexation of such cities is limited by Subdivision 2., Art. 1175, providing that such cities shall have the power to annex "additional territory lying adjacent to said city, according to such rules as may be provided by said charter".

Pursuant to the constitutional grant and subject to the statutory limitations, according to an authoritative report[1] of a few years ago, sixty-five cities of Texas have adopted charter provisions permitting annexation of additional ter-

[1] Staff Research Report to the Texas Legislative Council, Municipal Annexation, pg. 24, 25 (1954).

ritory by ordinance without the consent of the residents of the territory annexed.

Among these cities is the City of Houston in which the voters in 1913 adopted Section 2b., Art. 1 of the Charter authorizing the City Council by ordinance to annex "additional territory lying adjacent to said City with or without the consent of the territory and inhabitants annexed" in accordance with the procedure prescribed (Appendix B, p. 14). An additional limitation on this power was imposed by the adoption in 1942 of Section 3., Art. VII of the Charter providing for public meetings of the Council and its committees (Appendix B, pp. 14, 15).

## II. The Facts Material to The Questions Presented

On February 1, 1956, Councilmen Kesseler, McLemore and Marquette were appointed to the Ordinance Committee of the Council of the City of Houston (T.R. 203).[2] At approximately 8:30 o'clock A.M., on October 31, 1956, in the private dining room of the Mayor, with no member of the public or the City Secretary present and with no previous notice to the public or the Council, the Mayor presented a proposed annexation ordinance to various members of the Council, including members of the Ordinance Committee (M.C. 9-12).[3] Attached to the proposed ordinance was a letter of transmittal from the mayor on which there was a statement for the signatures of the Ordinance Committee stating that the ordinance was reported favorably and recommended for passage. This statement was signed by members of the Committee before the Council convened for its

[2] "T.R." is used to designate the printed transcript of the trial court proceedings.

[3] "M.C." is used to designate the deposition of councilman Lee McLemore ordered transmitted directly to this Court by the court below.

regular meeting at 10:30 o'clock A.M., that day (T.R. 80, 81). At the regular meeting the proposed ordinance was introduced, given the number 3351 and passed on first reading (T.R. 91, 92). (Appendix B, pp. 15, 16.) The Ordinance Committee failed to hold any meeting. Nor did the Committee file a report to the Council on Ordinance No. 3351 after its introduction.

On November 21, 1956, Ordinance No. 3351 was amended and passed on second reading (T.R. 102-109), and on November 23, 1956 the Ordinance, as amended, was published in a daily newspaper (T.R. 72). At the next regular meeting, on November 28, the ordinance was amended again and passed on third reading (T.R. 112-117), and on November 29, the ordinance, as amended, was published again in a daily newspaper. Neither publication was authorized or ordered by the Council. The Council took no action declaring that it had amended Ordinance No. 3351 as desired for final passage until it adopted a motion on December 26, adjourning the meeting until December 31, 1956, "for the purpose of then considering, for its final passage, Ordinance No. 3351" (T.R. 117). Ordinance No. 3351 was not published after adoption of this motion.

At the meeting on December 31 the Council finally passed Ordinance No. 3351, which purported to annex approximately 187 square miles to the City of Houston. At this meeting the Council arbitrarily denied citizens the charter right to be heard on the ordinance (T.R. 63, 74-78, 156, 157, 177-179).

On December 28, 1956, Petitioners filed this suit against the City of Houston and its Controller, stating two causes of action. The first (in behalf of Petitioners who are property owners in the area annexed, individually and as a class) sought a declaration that the ordinance was void and an injunction preventing assessment and collection of ad

valorem taxes on their property. The second (in behalf of five taxpaying citizens of the City) sought to enjoin payment by the City of the $35,000,000 bonded indebtedness of various water districts in the area annexed.

Petitioners' suit asserted that the ordinance was void for various defects not apparent on the face of the ordinance and for various other defects visible on its face. Under the first group, Petitioners alleged that the Ordinance Committee of the Council did not hold a public meeting or report on the ordinance to the Council after its introduction; that the Council did not amend the ordinance as desired by it for final passage before final publication in a daily newspaper; that the ordinance was not published in a daily newspaper one time after the Council had amended it as desired for final passage; and that the Council arbitrarily denied Petitioners and other citizens the opportunity to be heard at the meeting at which the ordinance was finally passed. In the second group, Petitioners alleged that the ordinance was void because its title was defective, it amended a referendum ordinance without a vote of the electorate, the charter provision authorizing annexation had been repealed, and that the description of the area annexed was defective (T.R. 1-26).

By exceptions and special pleas Respondents urged that Petitioners could not maintain the suit as to the first group of points without obtaining consent of a State's attorney on an information in the nature of *quo warranto* and that Petitioners could only attack the ordinance as being "void on its face" (T.R. 29-34).

In Texas the proceeding termed an "information in the nature of *quo warranto*" may only be brought by the Attorney General of Texas or the District Attorney or County Attorney of the appropriate county. Tex. Civ. Stat. (Vernon 1948), Art. 6253. (Appendix B, pp. 13, 14.) The juris-

diction of the District Attorney of Harris County is limited to criminal cases. Tex. Civ. Stat. (Vernon 1954 Supp.) Art. 326k-26. On January 1, 1957, and at all times subsequent material to this cause, the County Attorney of Harris County was Joe Resweber. From January 1, 1956 until 12:00 P. M. December 31, 1956 Mr. Resweber was a member of the Council of the City of Houston. While a member of the Council Mr. Resweber attended the meetings at which Ordinance No. 3351 was introduced, amended and passed on various readings and voted for the passage of the ordinance on each reading. On January 16, 1957, Mr. Resweber, as County Attorney advised the County Judge of Harris County in a written opinion that the judge did not have authority to call elections in response to three petitions presented to him for incorporation of areas within the territory described in Ordinance No. 3351, the opinion assuming that the ordinance was valid (T.R. 163-169).

In view of this opinion, Petitioners concluded that Mr. Resweber would undertake to represent the County Judge in a suit styled E. E. Forbes v. Bob Casey, No. 480,270, in the District Court of Harris County, a suit seeking a writ of mandamus to compel the County Judge to call an election on the question of incorporating the Village of Mykawa lying within the territory described by Ordinance No. 3351. This conclusion was verified on February 11, 1957 when Mr. Resweber filed an Original Answer in behalf of Judge Casey in said suit (T.R. 163,164). Under these facts the County Attorney was morally and legally disqualified to bring *quo warranto* on relation of these Petitioners.

Petitioners requested the Attorney General of Texas, the Honorable Will Wilson, to file a *quo warranto* proceeding questioning the validity of Ordinance No. 3351, urging that such proceeding should be brought to eliminate the technical procedural defenses asserted by Respondents and to allow

the substantive issues to be determined on the merits. This request was vigorously resisted by attorneys for Respondents. At the time of the hearing in the trial court the Attorney General had not consented to bring the proceeding and has not brought such a proceeding (T.R. 164-166).

The trial court granted Respondents a summary judgment without assigning reasons therefor (T.R. 218, 219). The Court of Civil Appeals considered and overruled Petitioners' points which asserted that the ordinance was void on its face, but refused to consider the points which urged that the ordinance was void for reasons not apparent on its face. See opinion Appendix A, pp. 1-12.

The Supreme Court of Texas denied Petitioners' Application for Writ of Error with the docket notation "Refused. No Reversible Error." and overruled a motion for rehearing on the Application (S.R. 1).[4]

## II. Federal Questions Raised in Courts Below.

**(A). Trial Court:** While denial of equal protection of the laws and due process to Petitioners did not occur until the entry of judgment by the Court of Civil Appeals denying their right to maintain this suit, prior to entry of the judgment by the pleadings (T.R. 5), argument to the trial court, and "Plaintiffs' Motion Concerning Form of Judgment Entered" (T.R. 215-217), Petitioners urged that these constitutional rights would be denied if they were refused the right to maintain this suit.

**(B). Court of Civil Appeals:** Under the rules governing appeals to the Court of Civil Appeals, the appealing party is required to file a brief containing a statement of points upon which the appeal is predicated. Tex. Rules Civ.

[4] "S.R." designates transcript of Supreme Court of Texas proceedings.

Proc., Rule 418. Point 13 in the "Brief for Appellant" (Petitioners) urged that the judicial rule that the ordinance could be attacked only by an information in the nature of *quo warranto* and that Petitioners had no right to seek judicial relief except by petition to a State's attorney of Texas denied Petitioners due process under the United States Constitution (C.R. 8).[5] The opinion of the Court of Civil Appeals does not mention this point, but it was overruled by the court affirming the judgment of the Trial Court (Appendix A, pp. 12, 13).

The rules governing proceedings subsequent to the opinion of the Court of Civil Appeals provide for the filing of a motion for rehearing in which the assignments of error relied upon for the rehearing shall be distinctly specified. Tex. Rules Civ. Proc., Rule 458. Point 4 in Appellants' Motion for Rehearing urged that the refusal of the Court of Civil Appeals to consider and rule on the points in the "Brief for Appellants" urging infirmities of the ordinance not apparent on its face constituted a denial of equal protection of the laws and due process under the Constitution of the United States (C.R. 183). This point was buttressed by argument in the motion for rehearing and by supplemental argument. This point was overruled by the order of the Court of Civil Appeals denying the rehearing (C.R. 180).

**(C). Supreme Court of Texas:** The rules governing applications for writ of error require a statement of the points of error relied upon. Tex. Rules of Civ. Proc., Rule 469. Point 4 in Petitioners' Application for Writ of Error stated that the Court of Civil Appeals erred in refusing to consider and rule on Petitioners' points of error in the brief in the Court of Civil Appeals asserting the ordinance was

[5] "C.R." designates transcript of Court of Civil Appeals proceedings.

void for infirmities not apparent on its face and that such refusal constituted a denial of equal protection of the law and due process guaranteed by the Fourteenth Amendment of the Constitution of the United States (A. 6).[6] The Supreme Court overruled this point by denial of the Application with the docket notation "Refused, No Reversible Error" (S.R. 1). This notation means that the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the Application presents no error which requires reversal and approves the judgment of the Court of Civil Appeals. Tex Rules Civ. Proc., Rule 483; *Johnson* v. *Zurich General Accident & Liability Ins. Co.*, 146 Tex. 232, 205 S.W. 2d 353 (1947); Calvert, *The Application for Writ of Error*, 3 Franki Tex. Rules of Civ. Proc. 404, 411; Simpson and Wall, *Problems of Precedent Affecting Courts of Civil Appeals' Opinions*, 4 S.W. L.J. 398, 403.

A motion for rehearing on the refusal of an application for writ of error is required to be filed within fifteen days and to distinctly specify the grounds relied upon for the rehearing. Tex Rules Civ. Proc., Rule 515. Ground 1 of Petitioners' Motion for Rehearing of application for writ of error urged again that the refusal of the Court of Civil Appeals to consider and rule on the points in Petitioners' brief asserting invalidity of the ordinance for reasons not apparent on its face constituted a denial of equal protection of the law and due process guaranteed by the Fourteenth Amendment of the Constitution of the United States (M. 4).[6] The order overruling the motion for rehearing overruled this ground of error (S.R. 1).

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[6] "A" designates certified copy of Application for Writ of Error filed with transcripts. "M" designates certified copy of Motion for Rehearing filed with transcripts.

**(D). Summary:** While Petitioners anticipated and attempted to forewarn the courts that a refusal of access to the courts to attack Ordinance No. 3351 would constitute a denial of rights under the Constitution of the United States, the denial of equal protection of the laws and due process did not occur until the entry of judgment by the Court of Civil Appeals. The trial court rendered no opinion and the only finding in its judgment is that there was no genuine issue as to any material fact, and the decree following simply granted the Respondents motion for summary judgment (T.R. 218, 219). This judgment did not determine that Petitioners did not have access to the court. The applicable rules require that a ruling complained of originating in the Court of Civil Appeals must be assigned as error in the motion for rehearing in that court. Tex. Rules Civ. Proc., Rule 469. This Petitioners did (C.R. 183). Petitioners assigned such ruling as error in their Application for Writ of Error and the Motion thereon, both of which were overruled. Under this record the Federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari.

## ARGUMENT

### I. Importance of Questions.

Questions involving violation of the Fourteenth Amendment by a state's denial to a citizen of access to its court and by the state granting a judicial remedy to one man and denying it to another under like circumstances have rarely come before this Court, and the precise questions here have not been heretofore determined by this Court. Stated abstractly, the questions here are:

> (1) Whether due process and equal protection of the laws are denied a citizen by a state subjecting his

right to seek judicial relief against a void ordinance to the unrestrained discretion of a State's attorney, and

(2) Whether, when there is no basis of distinction and no reasonable relation to a legitimate object, a state denies due process and equal protection of the law when it grants judicial relief to a citizen annexed by an ordinance void on its face and denies it to another under like circumstances and in the same territorial jurisdiction annexed by void ordinance whose invalidities do not appear on its face, unless he can obtain consent of a State's attorney.

These two questions are not unlike those presented in *Yick Wo* v. *Hopkins*, 118 U.S. 356, 6 S. Ct. 1064 (1886) and *Truax* v. *Corrigan*, 257 U.S. 312, 42 S. Ct. 124 (1921), respectively. *Yick Wo* holds that a person's rights cannot be subjected to an arbitrary power to give or withhold consent to their exercise and that if a law fair on its face is administered by public authority with an unequal hand "so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights", the Fourteenth Amendment is violated. Similarly, *Truax* holds that the amendment is violated by the state granting a judicial remedy to one man and denying it to another under like circumstances in the same territorial jurisdiction.

The occasions for this Court to affirm these basic principles, exemplified by the maxims, "all men are equal before the law," and "this is a government of laws and not of men," have been too few and too long ago to prevent encroachments today. Their affirmation today will insure against unlawful restraints on access to courts tomorrow.

## II. The Texas Proceeding of Quo Warranto a Remedy to Protect Private Rights

Application of the basic principles stated above to the instant case requires review of the proceeding in Texas

termed an "information in the nature of *quo warranto*". This proceeding is prescribed by statute. Tex. Civ. Stat. (Vernon 1940) Art. 6253.[7] (Appendix B, p. 13.) Generally, the statute prescribed a procedure by which the state may forfeit a franchise and provides that

> "the Attorney General, or district or county attorney of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof in vacation for leave to file an information in the nature of a quo warranto in the name of the State of Texas."

The statute was enacted in 1879. Tex. Acts, 16th Leg., S.S., 1879 p. 43.

Both before and after adoption of the statute *the proceeding was recognized as one to be filed only when a public injury was involved. Banton* v. *Wilson*, 4 Tex. 400 (1849); *Brennan* v. *City of Weatherford*, 53 Tex. 330 (1880). It has long been recognized in Texas, however, that Art. 6253 has been used *practically* to protect *private* rights and not public rights. In 1885 the Supreme Court of Texas observed that though the action was "brought in the name of the State it is usually upon the relation of the real party plaintiff". *State ex rel Jennett* v. *Owens*, 63 Tex. 261 (1885). At its next term the Texas Supreme Court noted the practice that the relator in a *quo warranto* proceeding was "the real plaintiff" and that the state was "a nominal party", and "in fact, the state, in these contests between private parties over the title to an office, is, in reality, more like an impartial observer than a partisan of either claimant" and that "practically, the State's attorneys take no part in the proceeding,

[7] The court below did not mention Article 6253, but is the basic provision on *quo warranto* proceedings.

and the plaintiff's side of the case is represented by the relator's counsel alone." *McAllen* v. *Rhodes*, 65 Tex. 348 (1886).

These judicial recognitions of the practical administration of the *quo warranto* statute are supported by the actual practices evidenced by reported cases. The State's attorneys may bring the action on their "own accord or at the instance of any individual relator". Examination of the reported cases, however, have failed to reveal any instances in the past 50 years when *quo warranto* proceedings have been brought except on the relation of individual relators.

The practical administration of Art. 6253 is illustrated by *State ex rel Bennett* v. *Clarendon Independent School District*, ..... Tex. ..... 298 S.W. 2d 111 (1957). This was a *quo warranto* action to test the validity of a consolidation of school districts. The Court of Civil Appeals affirmed the judgment of the trial court dismissing the action on the ground that the State was not "validly a party". The county attorney signed the pleadings, but did not participate in the trial, the trial being conducted by private counsel for relators. At a hearing after trial the county attorney testified that he signed the information and participated to the extent he did "not because he considered that the state had any interest in the suit, but simply because he thought the individual relators were entitled to 'have their day in court'". Referring to this testimony the Supreme Court held,

> "We take this to mean, so far as the county attorney was concerned, the participation of the State was purely for the convenience of the individual relators, although his conclusions thus to assist them was obviously one reached in the good faith exercise of his official judgment".

Despite this testimony and interpretation the Supreme Court reversed the lower decision holding:

> "It is felt that the admitted absence of a motive on the part of the State to seek relief on its own account, as well as the lack of the personal participation on the part of the State's attorney in the trial, are immaterial, the suit having been filed under the signature of the county attorney and prosecuted with his full consent."
>
> * * *
>
> "It is believed that the same discretionary authority . . . operates also to free him from court control either as to his object in prosecuting the suit or the manner in which he chooses to prosecute it. The extent to which such a rule would apply in case of bad faith on his part is a matter not before us, it being conceded that the county attorney acted in good faith throughout. His admittedly sole motive of giving the private relators 'their day in court', as distinguished from seeking for the State relief in which he deemed it to have an interest, was thus not ground for dismissal of the suit. Still less ground was his failure to participate personally in the trial, when he undoubtedly wanted the case to be tried and had authorized counsel for the private relators to conduct the trial."

While the court speaks of good faith exercise of an official judgment, at the same time it recognizes that the bringing of the action for the sole motive of giving a private relator his "day in court" when the State's attorney did not consider the State had an interest in the suit, was not a bad faith exercise of his judgment. As said in *Yick Wo*, this is not recognition of discretion in the legal sense of the term.

Although initiation of the action is within the unbridled discretion of the State's attorney he "cannot be compelled to do so against his will by mandamus brought by interested

private parties." *State ex rel Bennett* v. *Clarendon Independent School District*, ..... Tex. ....., 298 S.W. 2d 111 (1947); *McAllen* v. *Rhodes*, 65 Tex. 348 (1886). The statute, Texas Civil Statutes, (Vernon's 1948) Art. 6253 requires a petition for a *quo warranto* proceeding to be presented to the court "for leave to file". This does not vest arbitrary discretion in the court, it vests a sound judicial discretion subject to appellate review and the discretion is abused if leave to file is refused on a petition stating a cause of action. *State ex rel Manchac* v. *City of Orange*, 274 S.W. 2d 886 (Tex. Civ. App., 1955 err. ref. n.r.e.). This recognition of judicial discretion emphasizes that the discretion vested in the State's attorneys is not judicial.

## III. Conclusions on the First Question Presented.

These conclusions are inescapable. Although on its face the statute authorizes a proceeding to protect a public right, the bringing of which rests in the sound discretion of a State's attorney, under the practical administration of the statute and the common law of the State of Texas it provides a remedy to protect private rights even when no interest of the State is involved and vests in the State's attorneys, who cannot be compelled to bring the action, unbridled and unrestrained authority to grant or withhold the remedy in accordance with their personal desires. Thus, property owners in areas annexed by ordinances of home rule cities are divided into two classes by an arbitrary line, on one side of which are those who are permitted to pursue judicial remedies by the mere will and consent of the State's attorneys, and on the other those from whom that consent is withheld at their mere pleasure and will. This is not equal protection of the laws. *Yick Wo* v. *Hopkins*,

118 U.S 356, 6 S. Ct. 1064 (1886). In principle, this is condemned also by authorities invalidating municipal ordinances and municipal action not providing standards or guides for administrative action. *Staub* v. *City of Baxley*, 78 S. Ct. 277 (1958) and cases cited at pages 282-284.

## IV. Lack of Basis for Distinction in Remedies Made By Court Below.

Perhaps the Fourteenth Amendment does not require the State to provide a judicial remedy to a citizen annexed by a void ordinance (and it is not argued to the contrary here), but it does require that if the remedy is granted to one person it shall not be withheld from other persons similarly situated. *Truax* v. *Corrigan*, 257 U.S. 312, 42 S. Ct. 124 (1921). An Arizona statute, which prohibited the granting of an injunction against acts by striking employees which acts would be enjoined under a general injunction statute if committed by anyone other than an employee, was held to deny equal protection of the law to the employer. The distinction drawn by the state court between the right to attack an ordinance void on its face and the right to attack one void but the infirmity appears elsewhere is equally bad. There is no basis for the distinction. The public interest[*]

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[*] It is held that the public interest requires *quo warranto* by the State. Much harm could result from "permitting individual citizens from year to year to collaterally attack the validity of a city government." *Tod* v. *City of Houston*, 276 S.W. 419 (Tex. Com. App. 1925); "public policy demands that the validity of territorial extensions . . . not be subject to attack by private citizens" because the judgment in each case would only bind parties thereto. *Kuhn* v. *City of Yoakum*, 6 S.W. 2d 91 (Tex. Com. App. 1928). The validity of this reasoning is questionable. A class action is binding on all members of the class, Tex. Rules Civ. Proc., Rule 42, and a taxpayer's suit is binding on all matters which could have been urged. *Cochran County* v. *Boyd*, 26 S.W. 2d 364 (Tex. Civ. App. 1930, error ref.) The instant suit is a class action and a taxpayer's suit.

is involved in either case, and the condition that the consent of the State's attorney must be acquired in the latter instance and not in the former has no reasonable relation to the legitimate object of having the State protect public rights, rather than protection by multiple suits of citizens.

The distinction in remedies is not based on any difference in the method by which Texas Courts consider the validity of an ordinance. Whether the infirmity appears on the face or not, the ordinance is held void if it fails to comply with controlling constitutional, statutory and charter provisions. Sec. 5, Art. XI, Tex. Const. (Vernon's 1948), provides that any ordinance or charter provision inconsistent with a general law is void. Art. 1175, Tex. Civ. Stat. (Vernon 1948), prescribes that the power of annexation by ordinance must be exercised "according to such rules as may be provided by said charter". Sec. 2b, Art. 1, Charter of the City of Houston and annexation provisions of numerous other Texas cities, prescribe rules to be followed in adopting annexation ordinances. An ordinance not adopted in accordance with these rules violates not only the charter provision but the statute and the constitutional proscription of an ordinance inconsistent with a general law. No distinction between the lack of compliance being apparent or not is made by the constitution, statute or charters, or the courts.

Whether an ordinance annexes territory or ordains on other subjects the courts of Texas have held repeatedly that every step prescribed by statute or charter in the passage of an ordinance must be taken or the ordinance is void. This, without distinction between an ordinance void on its face and one whose invalidity is not so apparent. Annexation ordinances, none of which was void on its face, were held void in *City of Corsicana* v. *Willmann*, 147 Tex. 377, 216 S.W. 2d 175; *State ex rel Osborn* v. *City of McAllen*, 127 Tex. 63, 91 S.W. 2d 688; and *City of River Oaks* v. *Lake-*

*worth Village*, 231 S.W. 2d 768 (Tex. Civ. App. 1950, error ref. n.r.e.).[9]

Ordinances on other subjects not adopted in accordance with charter or statutory provisions uniformly have been held void. *Zachry* v. *City of San Antonio*, ..... Tex. ....., 305 S.W. 2d 558 (1957); *City of San Antonio* v. *Micklejohn*, 89 Tex. 79, 33 S.W. 735 (1895); *State ex rel Rea* v. *Etheridge*, 32 S.W. 2d 828 (Tex. Com. App. 1930); *Castleberry* v. *Coffee*, 272 S.W. 767 (Tex. Com. App. 1925); *City of Centerville* v. *Adkisson*, 291 S.W. 2d 798 (Tex. Civ. App. 1956); *Kerr* v. *Shambaugh*, 86 S.W. 2d 798 (Tex. Civ. App. 1935); and *Mills* v. *City of San Antonio*, 65 S.W. 1121 (Tex. Civ. App., err. ref. 1901); *Peters* v. *Gough*, 85 S.W. 2d 515 (Tex. Civ. App. 1935).

The effect on the State by an annexation by a void ordinance is the same whether the invalidity is apparent by reading the ordinance or the minutes of the proceedings of its adoption. The invalidity of an ordinance having a defective title is apparent on the face of the ordinance. The invalidity of an ordinance not published in accordance with charter provisions is not apparent on its face but it is just as void, and there is no reason or basis for denying judicial remedy to attack the latter and affording a remedy to attack the former.

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[9] While the notation "Refused. No Reversible Error" ordinarily does not indicate approval of a holding of a Court of Civil Appeals by the Supreme Court, since only one holding was involved in the *River Oaks case*, the refusal of the Supreme Court to entertain the writ of error approved that holding. *McLendon* v. *City of Houston, et al*, 153 Tex. 318, 267, S.W. 2d 805, 806 (1954); *State* v. *Texas City*, ..... Tex. ....., 303 S.W. 2d 780, 782 (1957).

## CONCLUSION

Petitioners' persons and property have been subjected to the general municipal jurisdiction of the City of Houston and their property has been subjected to taxation by the City of Houston by an ordinance annexing additional territory to the City and by judgment of the court below Petitioners have been denied a judicial remedy unless the ordinance is void on its face or a State's attorney can be pursuaded to perform the formality of signing a petition for an information in the nature of *quo warranto*. Perhaps the State of Texas is not required to provide judicial remedies to citizens to attack an annexation ordinance, but when such remedy is provided it must be afforded equally to all citizens similarly situated and not subject to the arbitrary discretion of an administrative official. Two hypothetical cases illustrate the importance of the questions.

(1) The property of Farmer Brown on the south side of U.S. Highway 90, near the City of Houston, and the property of Farmer Green across the highway are annexed by separate identical ordinances, neither of which was published as required by the Charter of the City of Houston. The Attorney General does not believe that the State has an interest in challenging either ordinance, but as a favor files *quo warranto*, on the relation of Farmer Brown, attacking the ordinance, and refuses a similar request from Farmer Green.

(2) The farm of Farmer Smith on the west side of U.S. Highway 75, near Houston, is annexed by an ordinance having a defective caption. He may bring suit, without the consent of a State's attorney because the ordinance is void on its face. The property of Farmer Jones, across the highway on U.S. Highway 75, is annexed by an ordinance which was not published as required by the charter. This

ordinance is equally void, but Jones is without remedy unless he can persuade a State's attorney to perform the formality of filing *quo warranto*.

The farmers of the Brown and Green families are numerous in Texas and the questions here are important to them. More important though is the need for affirmation of the guarantee of access to courts to all persons equally — a question not directly discussed by this Court since *Truax* v. *Corrigan*.

Wherefore, Petitioners respectfully pray that a writ of certiorari issue to the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas.

Respectfully submitted,

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# APPENDIX A

## OPINION AND JUDGMENT BELOW

### Opinion of Court of Civil Appeals

BELL, Justice.

This case involves an attack upon annexation ordinance No. 3351 passed by the City Council of the City of Houston on December 31, 1956. Under the terms of the ordinance rather extensive territory lying adjacent to the city was added to the corporate limits of Houston.

Appellants, who were the plaintiffs in the trial court, by their First Amended Original Petition, asserted two causes of action. The plaintiffs in the causes of action are different.

In the first cause of action some one hundred individual citizens of the territory annexed sued the City of Houston seeking a declaratory judgment that the ordinance was void, and seeking an injunction to prevent assessment and collection of ad valorem taxes. They sued in their individual capacities and as representatives of the other residents of the territory annexed.

In the second cause of action certain citizens of the City of Houston, as tax payers, sued the City of Houston and its controller seeking to enjoin payment of any debts or claims of any Fresh Water Supply District or Water Control and Improvement District situated within the annexed territory.

Neither the County Attorney of Harris County, nor the Attorney General of Texas, joined in either of the causes of action.

The appellees, in their answer to the appellants' first cause of action, filed special exceptions, a general denial and special answers. The special answers stated that the ordi-

nance can only be attacked by a direct suit in the nature of a quo warranto proceeding as the complaints of appellants at most set up mere irregularities in the passage of the ordinance.

Appellees' answer to the second cause of action is substantially the same as to the first cause of action with the added special answer that under Article 1182c-1 of the Laws of Texas, 1925, Vernon's Ann. Civ. St., authority is given the city to assume the indebtedness of Fresh Water Supply Districts and Water Control and Improvement Districts.

Both appellants and appellees filed motions for summary judgment. The trial court denied appellants' motion and granted that of appellees.

Appellants contend the action of the trial court was erroneous because under the undisputed facts the ordinance was void and in this situation a private citizen may maintain the suit without joinder by the State of Texas.

The City Council annexed the territory under authority of Article I, Section 2b of the City Charter, which reads as follows:

> "Sec. 2b. Extending Limits by Action of City Council — The City Council shall have power by ordinance to fix the boundary limits of the said City of Houston and to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city with or without the consent of the territory and inhabitants annexed; that upon the introduction of such an ordinance in the Council after it has been reported upon by the Ordinance Committee and has been amended as desired by the Council for final passage it shall be published in some daily newspaper published in the City of Houston one time, and shall not thereafter be finally passed until at least 30 days has elapsed after said publication, and when said ordinance is finally passed the said territory so annexed shall be a part of the City of Houston, and the inhabi-

tants thereof shall be entitled to all the rights and privileges of other citizens, and shall be bound by the acts, ordinances, resolutions and regulations of the said city." (Added by amendment, 1913.)

Appellants contend that all provisions of this Article are mandatory and since the City Council did not comply with them the ordinance is void. They say the Council failed to comply with the provisions in the following respects:

1. The Ordinance Committee did not hold a meeting before or after the ordinance was introduced in the City Council.

2. The Committee gave no notice of the time and place of a meeting.

3. No opportunity was given citizens to be heard on the ordinance by the Committee.

4. The Committee did not report on the ordinance after it was introduced.

5. The City Council arbitrarily denied appellants and other citizens the opportunity to be heard at any council meeting, as required by Section 3, Article III of the Charter.

6. The ordinance was not amended as desired by the Council for final passage before it was published in a newspaper, as required by Section 2b, Article I.

7. The ordinance was amended at the Council meeting of November 28, and since there had been publication of the ordinance before the amendment this made it a new ordinance which had been read only once and therefore the publication on November 29 of the ordinance as amended was not a compliance with the Charter.

These represent the complaints concerning alleged failure to comply with the charter provisions.

However, appellants also contend that Article I, Sec. 2b of the Charter is void as being in conflict with Article 1265, Revised Civil Statutes of Texas, Vernon's Ann. Civ. St. Art. 1265, and therefore the city is without authority to annex territory without a vote of the persons in the city.

We will first determine the validity of Article I, Sec. 2b, of the Charter, which confers power of annexation, without a vote of the people, upon the City of Houston.

Article I, Sec. 2b, was adopted as an amendment to the Charter in 1913. This was done pursuant to the authority conferred by Article XI, Sec. 5, Constitution of Texas, Vernon's Ann. St. This constitutional provision confers authority upon cities with a population of more than 5,000 inhabitants to adopt charters so long as a provision of the charter is not inconsistent with some provision of the Constitution, or the general laws of the State of Texas. At the time of the adoption of Sec. 2b, Article I, of the Charter, it was valid since it was not inconsistent with the Constitution of Texas or any general law. It therefore effectively conferred power upon the City Council of the City of Houston to annex territory adjacent to the city by passing an ordinance. Thereafter the Legislature of Texas passed an Act which became Article 1265 of the Revised Civil Statutes of 1925. Under this article cities with a population of between 100,000 and 150,000 could annex territory only after a vote of the people of the city. This was held to be applicable to Houston in *Hunt* v. *Atkinson*, Tex. Comm. App., 12 S.W. 2d 142. There an annexation ordinance passed without a vote of the people while Houston was within this population bracket was held void. However, the City of Houston, under the federal census of 1930, had a population far in excess of 150,000 inhabitants, and Article 1265 was no longer applicable to Houston. The passage of Article 1265 did not render Sec. 2b, Article I, void. It merely suspended its

operation so long as Houston remained in the prescribed population bracket. The charter provision was valid when passed and while its effectiveness was suspended so long as an inconsistent general law existed; when the inconsistency was removed by Houston passing out of the class of cities covered by Art. 1265, Sec. 2b, Article I, again became operative. 39 Tex. Jur., Sec. 72, p. 136; 50 Amer. Jur., Sec. 581; *Texas & P. Ry. Co.* v. *Graham*, Tex. Civ. App., 257 S.W. 642 (error dism.); *Texas & N. O. Ry. Co.* v. *Yerkes*, Tex. Civ. App., 156 S. W. 579 (error ref.); *Houston & T. C. R. Co.* v. *Bright*, Tex. Civ. App., 156 S.W. 304 (error ref.); *Reid* v. *State of Colorado*, 187 U.S. 137, 23 S. Ct. 92, 47 L. Ed. 108; *In re Rahrer*, 140 U.S. 545, 11 S. Ct. 865, 35 L. Ed. 572; *Sturges* v. *Crowninshield*, 4 Wheat. 122, 17 U.S. 122, 4 L. Ed. 529.

Sec. 2b, Article I, of the Charter, being valid and operative, the City of Houston had power by ordinance to annex the territory described in Ordinance No. 3351.

The city, having power to annex the territory by ordinance, without the consent of the inhabitants of the territory annexed, the ordinance may be collaterally attacked only if the ordinance is void on its face. 30A Tex. Jur., Municipal Corporations, Sec. 99, pp. 111-113; *Tod* v. *City of Houston*, Tex. Com. App., 276 S.W. 419; *Beyer* v. *Templeton*, 147 Tex. 94, 212 S.W. 2d 134; *Lefler* v. *City of Dallas*, Tex. Civ. App., 177 S.W. 2d 231; *Phillips* v. *City of Odessa*, Tex. Civ. App., 287 S.W. 2d 518 (error ref., n.r.e.).

In *Lefler* v. *City of Dallas*, the Court said:

> "The attack here made upon appellee's ordinance is a collateral one, not being in nature of quo warranto or to which the state is a party. * * * Appellants recognize this by assuming the burden of establishing utter invalidity of the ordinance on its face; * * *. Appellants' objections to the measure in general are based upon an

> alleged failure to comply with the law governing annexation; and in this connection, distinction should be drawn between municipal acts unauthorized by law or color of law, and those consisting of a mere irregular exercise of power. Appellants, to maintain a collateral attack, must show an entire want of power on the part of the City to annex * * *, and it is not sufficient to allege a mere irregular exercise thereof. * * * Appellants' contentions, therefore, that the territory is not sufficiently described by metes and bounds; nonjoinder of the area to the City; and that complainants were not afforded a hearing before the Council, are obvious attacks on the *regularity* of the annexation proceedings * * *." [Tex. Civ. App., 177 S.W. 2d 233.]

The fact that appellants ask for a declaratory judgment does not change the character of the attack. The Declaratory Judgment Act does not enlarge or create new jurisdiction for the courts. *Phillips* v. *City of Odessa*, *supra*.

This suit being a collateral attack, it is necessary that appellants show the ordinance to be void upon its face. The allegations in appellants' First Amended Original Petition setting up the absence of notice of hearings before the Ordinance Committee and City Council, the denial of a right to be heard, the amendment of the ordinance, failure of the Ordinance Committee to hold a meeting and report after the ordinance was introduced, and the failure to hear appellants, are matters that may be asserted only in a direct attack by the State, or its representatives, in a proceeding in the nature of quo warranto.

Appellants contend the caption to the ordinance is insufficient. The caption reads as follows:

> Ordinance No. 3351
>
> "An Ordinance Extending the City Limits of the City of Houston to Include All Lands and Area Within

Certain Limits and Boundaries With Certain Exceptions, and Annexing to the City of Houston All of the Area Within Said Limits and Boundaries With Certain Exceptions; Further Extending the City Limits of the City of Houston By Adding Certain Other Additional Territory Thereto, To-Wit: the Area or Areas Comprising (A) the City's San Jacinto Reservoir (Known as Lake Houston), (B) the City's San Jacinto River Dam and Appurtenant Lands; and (C) the City's New West Water Canal and the Right-of-Way Therefor; Providing That Such Ordinance Shall Not Affect the Jurisdiction of the City of Houston Over Certain Territory Which Was Acquired by Virtue of an Ordinance Passed April 18, 1913; Providing a Saving Clause; and Providing That the Inhabitants of the Territory Hereby Annexed Shall be Entitled to the Rights and Privileges of Other Citizens of the City of Houston and Shall be Bound by the Acts, Ordinances, Etc., of Said City."

The assertion is that the caption does not clearly express the subject of the ordinance as required by the City Charter, Sec. 3, Article VII, but to the contrary conceals the subject by expressly mentioning a specific description of only a small portion of the lands annexed. Too, they say more than one subject is expressed in the caption.

The caption first states that this is an ordinance "extending the City limits * * * to include all lands and area within certain limits * * * annexing to the City of Houston all of the area within said limits and boundaries with certain exceptions; * * *."

The first part of the caption gives notice that the subject matter of the ordinance is annexation of territory and the territory is such as is described.

The caption continues: "* * * further extending the City limits * * * by adding certain other additional territory * * *."

The use of the terms "further" and "other additional" gives notice that in addition to the lands covered in the first part of the caption the ordinance will also cover the area around Lake Houston.

We find no concealment in the language used.

We think the caption relates to only one subject, that is, the annexing of additional lands to the City of Houston. The caption is sufficient if there is one general object and all of the subjects are germane to such object and reasonably appropriate to effect the general object of the ordinance. *Magnolia Petroleum Co.* v. *Beck*, Tex. Civ. App., 41 S.W. 2d 488, error dism.; *City of Beaumont* v. *Gulf States Utilities Co.*, Tex. Civ. App., 163 S.W. 2d 426, error refused, w.o.m.

Appellants next assert that the description of the area annexed is insufficient. The basis of this contention seems to be that the ordinance as introduced on October 31, 1956, described extensive territory to be annexed and then excepted such "City, Town or Village other than the City of Houston" as was within the described area. They say this has the effect of excluding such other city, town or village which existed in the area at the introduction date of the ordinance and no one could know what cities, towns or villages might be incorporated before final passage of the ordinance.

Appellants make no contention that there was any effort by any group within the area to incorporate between the date the ordinance was introduced and the date of final passage. Even had such occurred, however, the efforts would have been ineffective because the law is settled that in an annexation proceeding the city exercises jurisdiction over the described area on the first reading of the ordinance and any attempt by persons living within the area to incorporate between the first reading and final passage of the

ordinance is ineffectual. *Beyer* v. *Templeton*, 147 Tex. 94, 212 S.W. 2d 134; *State ex rel. Winn* v. *City of San Antonio*, Tex. Civ. App., 259 S.W. 2d 248, error ref., n.r.e.

It follows that when the ordinance was introduced it could be ascertained what, if any, cities, towns or villages were then within the area, and what their corporate limits were and only those cities, towns and villages were, or need be, excepted.

Appellants further contend that the City Council lacked power to annex the territory by ordinance because in 1949 an ordinance extending the limits of the City of Houston was passed by a vote of the people. Article VIIb, Sec. 9, of the Charter, provides that an ordinance adopted by a vote of the people may be amended by council only in response to a referendum petition or a vote of the people. Ordinance 3351 is not and does not purport to be an amending ordinance. It leaves unaffected the territory covered by the 1949 ordinance. The 1949 ordinance remains fully effective. Ordinance 3351 covers an entirely distinct area.

Appellants, who were plaintiffs in the second cause of action, asserted in Plaintiffs' First Amended Original Petition, are tax payers of the City of Houston, and their claim in this cause of action is that they are authorized by Section 1 of Article IX of the Charter to maintain the suit to enjoin the payment of the debts and claims of any Water Control or Improvement District or any Fresh Water Supply District because such debts and claims are illegal since the annexation ordinance is void for the reasons hereinbefore discussed.

This is also but a collateral attack on the annexation ordinance which, as hereinbefore stated, can be maintained only in a suit brought by the State or its duly authorized

representatives, and the ordinance is not subject to the other complaints urged by appellants, as we have held.

Further, however, appellants contend that even if the annexation ordinance is valid, or cannot be collaterally attacked and therefore, the territory is a part of the City of Houston, they may maintain this attack under Sec. 1, Article IX of the Charter because the city cannot legally pay the debts or claims of such districts.

The pertinent parts of said charter provision read as follows: "Any citizen who is a property taxpayer of the City of Houston may maintain an action in the proper court to restrain the execution of any illegal, unauthorized or fraudulent contract or agreement * * *, and to restrain any disbursing officer of said city from paying any illegal, unauthorized or fraudulent bills, claims or demands against said city, * * *." They say the debts and claims of these districts are illegal because there is no authority in the city to assume them since Article 1182c-1, Vernon's Revised Civil Statutes of Texas, under which the city purports to act is invalid. The claim of invalidity is based on the following:

1. It conflicts with Article 7880-147zl, Vernon's Annotated Civil Statutes, which article is later in point of time and, therefore, controls and the latter requires a vote of the people.

2. It is a special law within the meaning of Article III, Sec. 56 of the Constitution.

3. It violates Sec. 35, Article III of the Constitution in that its title is misleading.

4. It is unconstitutional because it requires no vote of taxpaying property owners, as required by Article VI, Sections 3 and 3a, and Article XVI, Section 59, of the Constitution..

In their first amended original petition appellants made no contention that Article 1182c-1 was invalid as being repealed by Article 7880-147zl, V.A.C.S., or that the article was invalid because of a misleading title. We will therefore, take no further notice of these two complaints.

Article 1182c-1 is not invalid as violative of Article III, Section 56 of the Constitution, which prohibits the passage of a special law by the legislature.

The basis of the contention that this is a special law is that the title to the original act was too restrictive and the classification bore no reasonable relation to the object of the legislation. It is unnecessary for us to pass on this question because the 51st Legislature amended Sections 1 and 2 of the Act. Acts 51st Legislature 1949, Chapter 206, p. 387. Appellants do not attack the title to the amendatory act. They merely say since only Sections 1 and 2 were amended, this could not revive the whole act which was unconstitutional.

In Texas the legislature may amend an unconstitutional act and make it valid. *Ex parte Housley*, Tex. Cr. App., 285 S.W. 2d 720; *English and Scottish-American Mortgage and Investment Company, Limited* v. *Hardy*, 93 Texas 289, 55 S.W. 169.

Sections 1 and 2 which were amended, without more, require the city to assume all debts and liabilities of the districts and abolish the districts. The city, therefore, is but paying an obligation fixed on it by the legislature. Article IX, Sec. 1, of the Charter authorizing suits by taxpayers to enjoin payment of illegal, fraudulent or unauthorized claims, applies only to such as are created by the city in carrying out its municipal functions and not to obligations imposed by statute. *Wheeler* v. *City of Brownsville*, 148 Tex. 61, 220 S.W. 2d 457.

Article 1182c-1 does not violate Sections 3 and 3a of Article VI of the Constitution. These sections do not require a vote by the people on the question of assuming an indebtedness. They merely prescribe the qualifications of voters, where the matter of assuming or creating indebtedness is submitted to the people.

The article does not violate Section 59, Article XVI, or Section 52, Article III, of the Constitution. *Dallas County Water Control and Improvement District No. 3* v. *City of Dallas*, 149 Tex. 362, 233 S.W. 2d 291. *Wheeler* v. *City of Brownsville*, *supra*.

Appellants urge that in any event ordinance No. 3351 was not effective until it was published as an adopted ordinance on January 4, 1957. Article IX, Section 17b of the Charter provides for the publication of the title or caption of an ordinance within ten days after passage and approval. The same section provides an ordinance "shall take effect and be in full force and effect from and after its passage and approval * * * provided all such * * * ordinances shall be subject to the provisions * * * for referendum." Article VIIb, Section 3, provides for a referendum petition to suspend an ordinance if such be filed before such ordinance shall take effect or within thirty days after publication. No contention is made that the ordinance was in fact thus suspended. Under the facts and the Charter provisions the ordinance became effective December 31, 1956.

The judgment of the trial court is affirmed.

WOODRUFF, J., not sitting.

**Judgment of Court of Civil Appeals**

This cause, being an appeal from the judgment rendered and entered by the court below on March 25, 1957, came on

to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, Associate Justice Woodruff not sitting, it is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the appellants, E. E. Forbes, [names of 198 Appellants omitted] jointly and severally, and their surety, Fidelity and Deposit Co. of Maryland, pay all costs incurred by reason of this appeal and all such trial court costs as were therein adjudged against the said appellants. It is further ordered that this decision be certified below for observance.

## APPENDIX B

## STATUTES, CHARTER PROVISIONS AND ORDINANCES

### Statute: Tex. Civ. Stat. (Vernon 1948) Art. 6253

If any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes, any office or franchise, or any office in any corporation created by the authority of this State, or any public officer shall have done or suffered any act which by law works a forfeiture of his office, or any association of persons shall act within this State as a corporation without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as such, or exercises power not conferred by law; or if any railroad company doing business in this State shall charge an extortionate rate for the transportation of any freight or passengers, or refuse to draw or carry the cars of any other railroad company over its lines as required by the laws of this State, the Attorney General, or district or county attorney of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district

court of the proper county, or any judge thereof in vacation, for leave to file an information in the nature of a quo warranto in the name of the State of Texas. If such court or judge is satisfied that there is probable ground for the proceeding, he shall grant such leave and order the information to be filed and process to issue.

## CHARTER OF CITY OF HOUSTON:

### Art. I, Sec. 2b

The City Council shall have power by ordinance to fix the boundary limits of the said City of Houston and to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city with or without the consent of the territory and inhabitants annexed; that upon the introduction of such an ordinance in the Council after it has been reported upon by the Ordinance Committee and has been amended as desired by the Council for final passage it shall be published in some daily newspaper published in the City of Houston one time, and shall not thereafter be finally passed until at least 30 days has elapsed after said publication, and when said ordinance is finally passed the said territory so annexed shall be a part of the City of Houston, and the inhabitants thereof shall be entitled to all the rights and privileges of other citizens, and shall be bound by the acts, ordinances, resolutions and regulations of the said city.

### Art. VII, Sec. 3 (Second Paragraph)

All meetings of the Council and of all committees thereof shall be open to the public and the rules of the Council shall provide that citizens of the city shall have a reasonable opportunity to be heard at any such meetings in regard to any matter to be considered, provided that the Council may

enact ordinances requiring applications for hearings to be in writing and shall have power to prescribe rules and regulations for such hearings.

## ORDINANCES OF THE CITY OF HOUSTON

**Ordinance No. 3351**

[Title of ordinance omitted]

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SECTION 1: That the boundaries and limits of the City of Houston are hereby extended so as to embrace and include all of the lands and area lying within the following described boundaries and comprised within the following limits (save and except only such of the land lying within such boundaries and limits as is described in the exceptions set forth or stated in Section 2 of this ordinance), to-wit:

[Field notes or area annexed omitted]

SECTION 2: All of the area which is not now within the limits of the City of Houston, but which is comprised within the boundaries or limits hereinabove set forth is hereby annexed to and made a part of the City of Houston, save and except:—

[Description of excepted areas omitted]

SECTION 3: That the boundaries and limits of the City of Houston are also hereby extended so as to embrace and include the following described areas of land, and the following described areas of land are hereby also annexed and made a part of the City of Houston, to-wit,—

[Description of areas omitted]

[Sections 4, 5 and 6 omitted]

SECTION 7: That from and after the passage of this ordinance, the inhabitants of the territory hereby annexed shall be entitled to all the rights and privileges of other citizens of the City of Houston and shall be bound by the acts, ordinances, resolutions and regulations of the said City of Houston.

SECTION 8: The City Secretary is hereby authorized to publish this ordinance one time in some daily newspaper published in the City of Houston, Texas, and this ordinance shall not finally be passed until at least thirty days have elapsed after such publication.

Passed first reading the 31st day of October, 1956.

Passed second reading as amended the 21st day of November, 1956.

Passed third reading as further amended this 28th day of November, 1956.

Passed fourth and final reading this 31st day of December, 1956.

Passed this 31st day of December, 1956.

Approved this 31st day of December, 1956.

/s/ O. F. HOLCOMBE
Mayor of the City of Houston

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MAY 23 1958
JOHN T. FEY, Clerk

IN THE

# Supreme Court of The United States

OCTOBER TERM, 1957

No. 991

E. E. FORBES, ET AL.,

*Petitioners,*

v.

CITY OF HOUSTON, ET AL.,

*Respondents.*

## BRIEF OF RESPONDENTS, CITY OF HOUSTON AND ROY B. OAKES, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## SUBJECT INDEX


| | PAGE |
|---|---|
| Questions Presented | 2 |
| Statement of the Case | 3 |
| Argument | 6 |
| I. The Texas courts have not denied petitioners access to the courts, but they have given petitioners a full hearing on all matters that were properly before them | 6 |
| II. Petitioners are seeking to have the Supreme Court of the United States pass on moot questions | 8 |
| (1) The questions raised by petitioners | 8 |
| (2) The finding that respondent, City of Houston, complied with all mandatory requirements of its Charter in the passage of the Annexation Ordinance renders immaterial the purported federal questions raised by petitioners | 10 |

## INDEX OF AUTHORITIES


| | PAGE |
|---|---|
| Amalgamated Asso. v. Wisconsin Emp. Rel. Bd., 340 U.S. 416, 95 L. Ed. 389, 71 S. Ct. 373 (1951) | 10 |
| Beyer v. Templeton, 147 Tex. 94, 212 S.W. 2d 134 (1948) | 6, 7 |
| City of Blackwell v. City of Newkirk, 31 Okla. 304, 121 P. 260 (1912) | 7 |
| City of Wichita Falls v. Bowen, 143 Tex. 45, 182 S.W. 2d 695, 698 (1944) | 6 |
| Construction and General Labor Union v. Stephenson, 148 Tex. 434, 225 S.W. 2d 958 (1950) | 10 |
| Dixon v. City of Bremerton, 25 Wash. 2d 508, 171 P. 2d 243 (1946) | 7 |
| Dowell v. Board of Education, 185 Okla. 342, 91 P. 2d 771 (1939) | 7 |
| Firemen's and Policemen's Civil Service Commission v. Wells, ..... Tex. ....., 306 S.W. 2d 895, 897 (1957) | 3 |
| Graham v. City of Greenville, 67 Tex. 62, 2 S.W. 742 (1886) | 6 |
| Hunter v. City of Pittsburgh, 207 U.S. 161, 52 L. Ed. 151, 28 St. Ct. 40 (1907) | 7 |
| Johnson v. City of Indianapolis, 174 Ind. 691, 93 N.E. 17 (1910) | 7 |
| Kuhn v. City of Yoakum, 6 S.W. 2d 91 (Tex. Comm. App. 1928) | 6, 7 |
| Lane v. Finney, 274 S.W. 2d 521 (Mo. Ct. App. 1955) | 7 |
| Lefler v. City of Dallas, 177 S.W. 2d 231 (Tex. Civ. App. 1943) | 6, 7 |
| Newman v. United States, 238 U.S. 537, 59 L. Ed. 1446, 35 S. Ct. 881 (1915) | 9 |
| Old Nat. Life. Ins. Co. v. Guest, 163 S.W. 2d 241 (Tex. Civ. App., 1942, error ref'd w.o.m.) | 10 |
| People v. Reclamation Dist., 169 Cal. 786, 147 P. 1178 (1915) | 9 |
| Phillips v. City of Odessa, 287 S.W. 2d 518 (Tex. Civ. App. 1956, error ref'd n.r.e.) | 7, 8 |
| Prosper Independent School Dist. v. County School Trustees, 58 S.W. 2d 5 (Tex. Comm. App. 1933) | 7 |

| | Page |
|---|---|
| Punke v. Village of Elliott, 364 Ill. 604, 5 N.E. 2d 389 (1936) | 7 |
| Rowan v. City of Shawneetown, 378 Ill. 289, 38 N.E. 2d 2 (1941) | 9 |
| Schutte v. Schmitt, 162 Neb. 162, 75 N.W. 2d 656 (1956) | 7 |
| Shapleigh v. San Angelo, 167 U.S. 646, 42 L. Ed. 310, 17 S. Ct. 957 (1897) | 7 |
| Smith v. City of Emporia, 168 Kan. 187, 211 P. 2d 101 (1949) | 7 |
| Spiking School District v. Purported Enlarged School District, 362 Mo. 848, 245 S.W. 2d 13 (1952) | 7 |
| St. Pierre v. United States, 319 U.S. 41, 87 L. Ed. 1199, 63 S. Ct. 910 (1943) | 10 |
| Staples v. State, 112 Tex. 61, 245 S.W. 639 (1922) | 9 |
| State Ry. Comm. v. People, 44 Colo. 245, 98 P. 7 (1908) | 9 |
| State v. Brackman, 272 S.W. 2d 289 (Mo. 1954) | 9 |
| State v. City of Reno, 70 Nev. 167, 262 P. 2d 953 (1953) | 9 |
| Tod v. City of Houston, 276 S.W. 419 (Tex. Comm. App. 1925) | 7 |
| Town of Falls Church v. County Board, 166 Va. 192, 184 S.E. 459 (1936) | 7 |
| Town of Oneida v. Pearson Hardwood Flooring Co., 169 Tenn. 449, 88 S.W. 2d 998 (1935) | 7 |
| Tulare Irrigation District v. Shephard, 22 S. Ct. 531, 185 U.S. 2, 46 L. Ed. 773 (1902) | 7 |
| Wagoner County Election Board v. Plunkett, 305 P. 2d 525 (Okla. 1956) | 9 |
| Wheeler School District v. Hawley, 18 Wash. 2d 37, 137 P. 2d 1010 (1943) | 7 |
| Williams v. Book, 75 S.D. 173, 61 N.W. 2d 290 (1953) | 7 |
| Wright v. Allen, 2 Tex. 158 (1847) | 9 |


## STATUTES AND RULES


| | |
|---|---|
| Tex. R. Civ. P. 296-299 | 10 |
| Tex. Rev. Civ. Stat., art. 2524-1 (Vernon, 1948) | 8 |
| Tex. Rev. Civ. Stat., art. 6253 (Vernon, 1948) | 8 |

IN THE

# Supreme Court of The United States

OCTOBER TERM, 1957

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No. 991

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E. E. FORBES, ET AL.,

*Petitioners,*

v.

CITY OF HOUSTON, ET AL.,

*Respondents.*

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## BRIEF OF RESPONDENTS, CITY OF HOUSTON AND ROY B. OAKES, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The respondents, City of Houston and its Controller, Roy B. Oakes, file this opposition to the Petition for Writ of Certiorari filed by petitioners to review the judgment of the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas.

## QUESTIONS PRESENTED

The trial court granted respondents' Motion for Summary Judgment which was based on two grounds: (i) the undisputed evidence establishes that the City of Houston complied with the requirements of its charter in passing the Annexation Ordinance, and (ii) that even if there were procedural irregularities, such questions cannot be raised on collateral attack because the ordinance would not be void (R. p. 34). The only federal question involved here is:

**Does the well-established rule that a private citizen cannot attack collaterally a city ordinance unless it is void contravene any of the constitutional guaranties of the Fourteenth Amendment?**

The questions set forth by petitioners relate to constitutional questions which might arise in an attempt by petitioners to bring a *quo warranto* proceeding or to mandamus the State's Attorney to join in such suit. They could have no relevance in this suit for an injunction which is a collateral attack on the Annexation Ordinance.

## STATEMENT OF THE CASE

### (1) The Decisions of the Texas Courts in This Case.

Petitioners elected to bring this suit as a collateral attack upon Annexation Ordinance No. 3351, which was passed on final reading by the Houston City Council on December 31, 1956. They sought to enjoin the assessment of city taxes on their lands and to have determined under the Texas Declaratory Judgment Act that the ordinance was void (R. p. 1). The trial court sustained respondents' Motion for Summary Judgment and the Court of Civil Appeals affirmed this judgment (R. p. 218). The Texas Supreme Court refused to hear the case on the ground that there was no reversible error.[1] The Court of Civil Appeals passed on all questions raised by petitioners which would have rendered the ordinance void, but the Court held that alleged procedural irregularities in the passage of the ordinance would not render it void and could not be considered on collateral attack.

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[1] In their Application for Writ of Error to the Supreme Court of Texas, petitioners assigned eighteen points of error. By denying the application, the Texas Supreme Court approved each and all of the holdings of the Court of Civil Appeals which were assigned as error. *Firemen's and Policemen's Civil Service Commission v. Wells*, ..... Tex. ....., 306 S.W. 2d 895, 897 (1957).

**(2) The Facts.**

The matter of annexing additional territory to the City of Houston was before the City Council for eleven months in 1956. On February 1, 1956, there was introduced before the City Council and read on first reading Ordinance No. 2234, which provided for annexing substantially the same land as ultimately included on the final passage of Ordinance No. 3351 on December 31, 1956, except the area comprising Lake Houston which was included in the later ordinance (R. p. 189). At the same meeting on February 1, 1956, Mayor Holcombe appointed an Ordinance Committee (R. p. 203), and on February 15, 1956, Annexation Ordinance No. 2234 was amended and passed on second reading (R. pp. 206-207). At a Regular Meeting of the City Council held on March 7, 1956, R. C. Platzer, one of the petitioners here, protested the proposed annexation and stated that he represented two thousand people in the Mykawa area (R. p. 208); and at Regular Meetings of the City Council held on April 18, 1956, and August 29, 1956, various matters relating to the annexation of certain fresh water supply districts were discussed by members of the public before the Council (R. pp. 209-210). While Annexation Ordinance No. 2234 was being considered by the Council, the Chairman of the Houston City Planning Commission recommended that the City Council annex Lake Houston and the canal extending from the Lake to the City limits of Houston (R. p. 208); and it was undoubtedly due to such recommendation that the City prepared a new ordinance annexing the area included in Ordinance No. 2234 and also Lake Houston. Accordingly, on October 31, 1956, Ordinance No. 3351, which is involved in this case, was introduced and read on first reading (R. pp. 80-90). On November 14, 1956, members of the public, including the petitioner,

E. E. Forbes, appeared before the City Council and protested against the annexation (R. p. 180); and on the same date the City Council adopted a motion setting a public hearing to be held in the City Council Chambers at 9:00 a.m., Monday, November 19, 1956, "for the purpose of hearing those wishing to be heard on the annexation of additional territory to the City of Houston" (R. p. 138). A public hearing was held before the City Council on November 19, 1956, for the specific purpose of hearing the public on the subject of annexation, and various members of the public appeared before the City Council and stated their position on this subject (R. pp. 138-141). Ordinance No. 3351 was read on second reading at a Regular Meeting of the City Council held on November 21, 1956 (R. pp. 92-101); and such ordinance was published in the Houston Chronicle on November 23, 1956. On November 28, 1956, other members of the public appeared at a Regular Meeting of the City Council and protested against the annexation (R. p. 181), and at the same meeting Ordinance No. 3351 was amended for the last time and then read on third reading (R. pp. 110-117). The final form of the ordinance as read on third reading was published in the Houston Chronicle on November 29, 1956 (R. pp. 61-62); and on December 5, 1956, members of the public again appeared before the City Council at a Regular Meeting and protested against the proposed annexation (R. p. 182). On December 26, 1956, the Meeting of the City Council adjourned until Monday, December 31, 1956, for the purpose of considering the final passage of the Annexation Ordinance No. 3351 (R. p. 117), and on such latter date the Council met and the ordinance was read on its fourth and final reading and adopted with only one dissenting vote. The minutes recite that "after passage of the ordinance, a gentleman came forward and

requested permission to speak before the Council, • • • Mayor Holcombe advised the gentleman that the hearing had already been held and that the public would not be heard on it again" (R. p. 64).

Petitioners filed this suit on December 28, 1956, prior to the final passage of the ordinance.

## ARGUMENT

### I.

### THE TEXAS COURTS HAVE NOT DENIED PETITIONERS ACCESS TO THE COURTS, BUT THEY HAVE GIVEN PETITIONERS A FULL HEARING ON ALL MATTERS THAT WERE PROPERLY BEFORE THEM.

The trial court gave petitioners a hearing extending over several weeks before rendering judgment against them (R. 218). The Court of Civil Appeals discussed and passed on all questions raised by petitioners which would have rendered the ordinance void, but the Court held that the ordinance could not be attacked collaterally for alleged procedural irregularities in the passage of the ordinance as they would not render it void.

The Supreme Court of Texas has held repeatedly that procedural irregularities in the passage of a city ordinance do not render it void. *Graham* v. *City of Greenville*, 67 Tex. 62, 2 S.W. 742 (1886); *Beyer* v. *Templeton*, 147 Tex. 94, 212 S.W. 2d 134 (1948); *Kuhn* v. *City of Yoakum*, 6 S.W. 2d 91 (Tex. Comm. App. 1928); *Lefler* v. *City of Dallas*, 177 S.W. 2d 231 (Tex. Civ. App. 1943). Where the ordinance is not void, it is not subject to collateral attack. *City of Wichita Falls* v. *Bowen*, 143 Tex. 45, 182 S.W. 2d 695, 698

(1944); *Beyer* v. *Templeton*, 147 Tex. 94, 212 S.W. 2d 134 (1948); *Kuhn* v. *City of Yoakum*, 6 S.W. 2d 91 (Tex. Comm. App. 1928); *Tod* v. *City of Houston*, 276 S.W. 419 (Tex. Comm. App. 1925); *Lefler* v. *City of Dallas*, 177 S.W. 2d 231 (Tex. Civ. App. 1943; *Phillips* v. *City of Odessa*, 287 S.W. 2d 518 (Tex. Civ. App. 1956, error ref'd. n.r.e.). This holding of the courts is based on a sound public policy which demands that territorial extensions of cities should not be subject to collateral attacks as much harm would come from permitting individual citizens to attack collaterally the validity of actions of the city government from year to year. *Tod* v. *City of Houston*, 276 S.W. 419 (Tex. Comm. App. 1925); *Kuhn* v. *City of Yoakum*, 6 S.W. 2d 91 (Tex. Comm. App. 1928). These conclusions are followed uniformly by the courts of other jurisdictions.[2]

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[2] *Shapleigh* v. *San Angelo*, 167 U.S. 646, 42 L. Ed. 310, 17 S. Ct. 957 (1897); *Tulare Irrigation District* v. *Shepard*, 22 S. Ct. 531, 185 U.S. 2, 46 L. Ed. 773 (1902); *City of Blackwell* v. *City of Newkirk*, 31 Okla. 304, 121 P. 260 (1912); *Dixon* v. *City of Bremerton*, 25 Wash. 2d 508, 171 P. 2d 243 (1946); *Johnson* v. *City of Indianapolis*, 174 Ind. 691, 93 N.E. 17 (1910); *Smith* v. *City of Emporia*, 168 Kan. 187, 211 P. 2d 191 (1949); *Spiking School District* v. *Purported Enlarged School District*, 362 Mo. 848, 245 S.W. 2d 13 (1952); *Lane* v. *Finney*, 274 S.W. 2d 521 (Mo. Ct. App. 1955).

The power of the state to create, abolish, and change the boundaries of municipal corporations is not limited by requirements of "due process" and "equal protection of the law" under the Fourteenth Amendment to the Constitution of the United States. *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 52 L. Ed. 151, 28 S. Ct. 40 (1907); *Prosper Independent School Dist.* v. *County School Trustees*, 58 S.W. 2d 5 (Tex. Comm. App. 1933); *Schatte* v. *Schmitt*, 162 Neb. 162, 75 N.W. 2d 656 (1956); *Wheeler School District* v. *Hawley*, 18 Wash. 2d 37, 137 P. 2d 1010 (1943); *Williams* v. *Book*, 75 S.D. 173, 61 N.W. 2d 290 (1953); *Dowell* v. *Board of Education*, 185 Okla. 342, 91 P. 2d 771 (1939); *Town of Falls Church* v. *County Board*, 166 Va. 192, 184 S.E. 459 (1936); *Punke* v. *Village of Elliott*, 364 Ill. 604, 5 N.E. 2d 389 (1936); *Town of Oneida* v. *Pearson Hardwood Flooring Co.*, 169 Tenn. 449, 88 S.W. 2d 998 (1935).

Petitioners have not been denied access to the courts. The opinion of the Court of Civil Appeals discloses that the Court passed on each question raised by petitioners which might have rendered the ordinance void, but the Court held that those questions which raised procedural irregularities could not be considered on collateral attack. There is no doubt that this was a collateral attack. Petitioners sought to enjoin the assessment of taxes by the City of Houston and also requested a declaratory determination that the ordinance was void (R. p. 1). The Texas Declaratory Judgment Act [Tex. Rev. Civ. Stat., Art. 2524-1 (Vernon, 1948)] did not enlarge the jurisdiction of the courts to permit collateral attacks on ordinances which were not void. *Phillips v. City of Odessa*, 287 S.W. 2d 518, 520 (Tex. Civ. App. 1956, error ref d n.r.e.).

## II.

## PETITIONERS ARE SEEKING TO HAVE THE SUPREME COURT OF THE UNITED STATES PASS ON MOOT QUESTIONS.

### (1) The Questions Raised by Petitioners.

Petitioners complain that under the Texas Quo Warranto Statute [Tex. Rev. Civ. Stat. Art. 6253 (Vernon, 1948)] they are denied equal protection because the State's Attorney may consent to a suit for one person and deny consent to another. They also contend that they have been denied due process because they cannot obtain the consent of the State's Attorney to a *quo warranto* proceeding.

Petitioners brought this suit as a collateral attack and after respondents raised the point that the alleged procedural irregularities in the passage of the Ordinance could not be considered in this case, petitioners sought to have the Attorney General bring a *quo warranto* proceeding.

The question whether the Attorney General will or will not institute such a suit is not material in determining the issues involved in this case. Petitioners will not have any greater rights in this particular case dependent upon the Attorney General's decision. Questions relating to the validity of the *Quo Warranto* Statute or to whether petitioners should have the right to institute such a proceeding without the consent of the Attorney General have no relevance in this case. They might be material in a suit by petitioners to mandamus the Attorney General or in an attempt by petitioners to institute a *quo warranto* suit without his consent.[3]

In the other questions raised by petitioners, they contend that they have been denied due process and equal protection because a person can bring a suit attacking an ordinance which is void on its face, but they cannot institute a case where the ordinance is not void on its face. This entire argument is wholly immaterial. The ordinance was not shown to be void on its face or by extraneous evidence and accordingly petitioners could not maintain this suit as a collateral attack. Furthermore, the Court of Civil Appeals considered all points raised by petitioners except those relating to alleged procedural irregularities. Since the Texas courts have held that such irregularities render the ordinance voidable and not void, they cannot be raised on collateral attack by petitioners or anyone else. Therefore, petitioners have not been denied equal protection.

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[3] Cf. *Newman* v. *United States*, 238 U.S. 537, 59 L. Ed. 1446, 35 S. Ct. 881 (1915); *Wright* v. *Allen*, 2 Tex. 158 (1847); *Staples* v. *State*, 112 Tex. 61, 245 S.W. 639 (1922); *People* v. *Reclamation Dist.*, 169 Cal. 786, 147 P. 1176 (1915); *Rowan* v. *City of Shawneetown*, 378 Ill. 289, 38 N.E. 2d 2 (1941); *State* v. *Brackman*, 272 S.W. 2d 289 (Mo. 1954); *Wagoner County Election Board* v. *Plunkett*, 305 P. 2d 525 (Okla. 1956); *State* v. *City of Reno*, 70 Nev. 167, 262 P. 2d 353 (1953); *State Ry. Comm.* v. *People*, 44 Colo. 245, 98 P. 7 (1908).

**(2) The Finding that Respondent, City of Houston, Complied with all Mandatory Requirements of Its Charter in the Passage of the Annexation Ordinance Renders Immaterial the Purported Federal Questions Raised by Petitioners.**

Respondents' Motion for Summary Judgment was based on two grounds and either ground is sufficient to support the judgment of the trial court. One of these grounds is that the City of Houston complied with the requirements of its City Charter in the passage of the Annexation Ordinance. The undisputed evidence in the record supports this conclusion. Since the Court did not state in his judgment the basis for his decision and as petitioners did not request findings of fact and conclusions of law, it must be presumed that the trial court found all facts to support his judgment. Tex. R. Civ. P. 296-299; *Construction and General Labor Union* v. *Stephenson*, 148 Tex. 434, 225 S.W. 2d 958 (1950); *Old Nat. Life Ins. Co.* v. *Guest*, 163 S.W. 2d 241 (Tex. Civ. App., 1942, error ref'd. w.o.m.).

Therefore, even if the Supreme Court should take jurisdiction of this case, it would be compelled to affirm the judgments of the Texas Courts because it must be presumed that the evidence establishes that the City of Houston complied with all procedural requirements in the passage of the Annexation Ordinance and accordingly that the ordinance is valid. Thus, the attempt by petitioners to have the Supreme Court pass on alleged federal questions which might be pertinent in some other case and which under no circumstances could require a reversal of this case, is an effort on the part of petitioners to have this Court determine moot questions. The Supreme Court has held that it will not decide such questions. *St. Pierre* v. *United States*, 319 U.S. 41, 87 L. Ed. 1199, 63 S. Ct. 910 (1943); *Amalga-*

*mated Asso.* v. *Wisconsin Emp. Rel. Bd.*, 340 U.S. 416, 95 L. Ed. 389, 71 S. Ct. 373 (1951).

WHEREFORE, respondents respectfully submit that petitioners' Petition for Writ of Certiorari should be in all things denied.

Respectfully submitted,

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